

## **Agenda for the 2018 Petition Strategy Session**

Adopted From Materials By  
Nadia Wood<sup>1</sup>

**Here is what we will cover today:**

- 1. What can you do right now before the petitioning period starts?**
- 2. What's in the petitioning packet?** Brief overview of the packet content (instructions, Bluebooking exercise, sources) with illustrations and some strategies for working with sources. Follow the computer presentation.
- 3. Structuring Your Comment: Side-by-side comparison of instructions and the finished petition.** Translating packet instructions into a case comment. Follow the handout and computer presentation.
- 4. Tricking the Graders Or How to Win Easy Points for Use of Authorities and Bluebooking Mechanics in Your Petition Text (not the Bluebook Exercise).** Easy strategies for scoring points in use of authorities and Bluebooking categories. Follow the handout - and let's work through an example, too!
- 5. Very briefly: what's in the rest of the packet that you should read at home.**
- 6. Office Software Behaving Badly, or How to Make Word Work for You During the Petitioning** (updated for Windows Office 2010 and Office for Mac 2008/2011/2016). Please follow the packet and computer presentation. We will cover the following:
  - a. Setting up a file template for your petition;
  - b. Mastering Office quirks and shortcuts;
  - c. Correcting the AutoCorrect;
  - d. Advanced Tech-Savvy: live cross-references and styles.

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**Parts of this packet that we will not cover today  
but which you should still read on your own time:**

**Writing the Petition (Case Comment)** - read this part of the handout for detailed information **ON YOUR OWN TIME**. Summary as follows:

- a. **Read the Petition Instructions**, now available at <http://www.minnesotalawreview.org/about/membership/> Set up headings and subheadings in the document template, add petition number and page numbers, and paste appropriate sections from the instructions into your Petition Template. You can't forget to do insert a petition number or write some section if the reminder is right in front of your face.
- b. **Read ALL the Materials**. It is a drag and at some point in the process you will be tempted to give up because plowing through 300 pages of obscure sources that are certain to include incomprehensible old English cases on a sunny day will seem not just daunting, but outright impossible. Don't give up, switch it up: tackle the Bluebook exercise instead. Then go back and finish reading your sources.
- c. **Take liberal notes**, use a highlighter, tab, write all over your packet, or use comments in Adobe when you are reading the materials! This is the time to formulate your thesis. If you finished reading everything, and have no idea what you are going to say, you just wasted three days of your life you can't get back.
- d. **Pick a topic**. Choose a topic you care about; choose something that is well-supported.
- e. **Follow the rigid Comment structure**. Your structure must mirror the format demanded in the instructions. Some sections are spelled out paragraph by paragraph and sentence by sentence. Do not deviate from the instructions! This is not the time to be creative with your organization. More on this later.
- f. **Endnotes: USE LIBERALLY!** When you scan your page, you should see a endnote every 1 or 2 sentences. If you have a paragraph without a single endnote, you are doing it wrong.
- g. **Be conscious of your time**. If you get bogged down, switch tasks. If you can't seem to formulate the idea or finish writing a paragraph, do some Bluebooking. Do editing of the finished material. Review your notes. Then go back and try again.
- h. After you finished, **re-read the instructions!** Make sure you followed them to the letter.

### **What Can You Do Right Now Before the Petitioning Period Starts?**

- 1. Read and tab the Bluebook.** Use plastic tabs and fine-point permanent marker. Make sure you have the current-**twentieth**-edition of the Bluebook! Reading the Bluebook is the only way you will become familiar with all its quirks. Don't try to read it in one sitting, there is no cure for the coma that will ensue. Instead, read for ten-twenty minutes a day: on the bus, in the bathroom, during lunch hour, when you are sick of outlining, while waiting for pizza to arrive. You get the idea. Carry the Bluebook with you and read it at every opportunity.
- 2. If you have time, do a practice Bluebook exercise.**
- 3. Write personal statements for journals.** Personal statements are another example of your writing. Your statement must be polished to perfection, and that takes time you don't have during the petitioning process. If you don't have time to polish now, at least have a good draft or even an outline. Anything you do now will free up your time when it really counts.
- 4. Read the draft 2018 instructions posted on the MLR page dedicated to petitioning information:** <http://www.minnesotalawreview.org/about/membership/> You will read the instructions several times again during the petitioning process, it won't hurt to become familiar with them now. **DO NOT USE THE WEBSITE'S INSTRUCTIONS OR INSTRUCTIONS USED AS EXAMPLES DURING THIS SEMINAR.** Always use printed instructions enclosed with your petitioning packet.
- 5. Read the sample petitions posted on the MLR page dedicated to petitioning information:** <http://www.minnesotalawreview.org/about/membership/> These are petitions of people who successfully petitioned to Law Review. These are not perfect petitions, but they will give you a good idea of what is expected.
- 6. Set up a Word template and styles for the petition and practice dropping endnotes and live cross-references.** We will do most of the work for that today!

**7. Make sure your equipment is up to the task and you have the right tools for the job.**

- If your computer's drive sounds like a grinder, it is time to replace it. If you are on Windows 3.1, update it. You don't want to be doing troubleshooting dead computer or outdated software during the petitioning process.
- Decide if you are going to be using Adobe Acrobat for working with sources or if you are going to be working with sources on paper. Purchase and install Acrobat; or buy fresh set of highlighters, tabs, legal pads, sticky notes, and other office supplies for working with paper sources. If you are working on paper, pick up a *large* binder (enough for at least 400 pages of content) and plan to 3-hole punch the packet once you pick it up in the library.
- Buy an erasable pen (Frixion) for the Bluebooking exercise.
- Install automatic back up software like Dropbox or install Google drive. It is free and in the event of hardware failure, will allow you to recover data on another computer. You will not get any more time to rewrite everything because your computer ate your petition.

**8. Make a plan for where you will write your petition.** Do you work well from home? Is there a quiet place to focus? When you need a change of scene, where will your second location be? Thinking through these simple things can help avoid distractions, noise, and hours laying on your couch brainstorming where to work.

**9. Clear your schedule for two weeks of petitioning.** Change doctor appointments, decline party invitations, contact your employer and see if you can start later, if need be.

**10. But, make social plans, and do so strategically.** Everyone needs a break. Prearrange dinner or a movie with some non-law-school friends. Pick friends who are supportive and who will lift your spirits. Avoid friends who tend to gravitate toward negativity.

**11. Find a friend, a sympathetic ear, or a support person.** You cannot talk to them about the petition itself, but you can certainly complain to them about how terrible the process is or how much you hate Bluebooking. Sometimes, all you need to do is vent. Unless the person you are venting to is not petitioning, also be prepared to listen to the same rant. You can also make a pact to do things during the petitioning process for both motivation and stress relief: "Let's work on the petition until 5 and then go work out/run/karaoke/salsa dancing/walk the dogs."

### **What's in the Petition Packet?**

The packet will be between 300 and 400 pages long. It will contain the following:

1. Instructions of all kinds. Read them ALL.
2. Bluebooking exercise. - 2 copies
3. Sources - usually over 300 pages.

### **Tips on working with sources.**

**On paper:** have post-it notes and highlighters handy! Note anything of interest or importance. Think about how you are going to organize your notes. One editor read the case, brainstormed issues she thought the case presented, then color-coded them on a piece of paper: issue A was red, issue B was blue, issue C was green, etc. Whenever she came across something that supported a particular issue, she color-coded that part of the source according to her code. Another editor color-coded according to the type of the argument: constitutional, statutory, etc. Just have a plan in place before you start reading the sources.

**Electronically:** In addition to printed materials, your petition packet will include a link to an electronic copy of the source packet.

### **Pages of interest in the petition packet:**

- Contact information for either when something goes wrong or you have a question
- The Grading Rubric
- **Formatting and case comment instructions.** These are incredibly important! Read, tab, reference while writing, and then re-read and check your petition for compliance with these when finished. If you can't follow the instructions, this may result in significant point reductions in your overall petition score.

## **List of Actual Reasons for Point Reductions Listed by the Graders**

### **Top Three:**

1. Source not in the packet (most likely because citing a source within a source and not an official packet source).
2. No petition number in the header.
3. No page numbers.

### **Other random sampling:**

Title does not contain case name

More than 10 pages of endnotes.

Text of the Comment runs over 10 pages

Endnotes are single-spaced and in a font size smaller than 12

Used internal cross-reference to another endnote (see Note 71)

Endnote 90 is single-spaced.

Heading on pg. 8 in wrong font.

Indents beginning each paragraph aren't the right size

Wrong font size in Note 73.

May be over 10 pages of endnotes, hard to tell because first two endnotes are on the end of the above the line section

## Structuring Your Comment

Developed by Nadia Wood Based on Her Actual  
Petition

The petitioning packet will include detailed instructions on how to structure your case comment. Sample 2016 instructions will be posted online: <http://www.minnesotalawreview.org/about/membership/>. Do not rely on instructions from this seminar or advanced online version, always read the final version of instructions enclosed with your petition and follow them to the letter! This is only an illustration how these instructions may translate into a finished product:

Instructions say . . .	The petition then looks like this. . .
<p>A. <b>Title.</b> The title should identify broadly your thesis about the main case that you will discuss in your Comment. It should include the case name. The title should be at the top of your Comment, in all caps, and centered.</p>	<p style="text-align: center;"><b>SIX YEARS IN LIMBO AT GUANTANAMO BAY: HOW <i>BOUMEDIENE V. BUSH</i><sup>1</sup> MISSED THE OPPORTUNITY FOR REDEMPTION</b></p>
<p><b>B. Introduction</b></p> <p>1. <b>First paragraph:</b> A brief statement of the facts, the procedural posture, and the holding of the main case, in that order. Use endnotes to elaborate. Do not detail the holding yet. Save this for the case description.</p>	<p>Lakhdar Boumediene and five other men of Algerian origin were seized in Bosnia and Herzegovina and handed over to the United States forces six years ago.<sup>3</sup> All were transferred to Guantanamo Bay Naval Base in Cuba and subsequently filed petitions for writs of habeas corpus.<sup>4</sup> The United States Court of Appeals for the District of Columbia Circuit initially affirmed the district court's dismissal of their claims for lack of jurisdiction.<sup>5</sup> But the Supreme Court reversed and remanded case back to the court of appeals, and the court of appeals remanded back to the district court.<sup>6</sup> In the meantime, Congress responded with legislation stripping federal courts of jurisdiction to hear habeas petitions.<sup>7</sup> The same appellate court heard detainees' consolidated appeals in <i>Boumediene v. Bush</i>.<sup>8</sup> The court ruled that the Military Commissions Act of 2006, in eliminating jurisdiction over habeas petitions from detainees at Guantanamo Bay, does not violate the Suspension Clause,<sup>9</sup> and thus federal courts have no jurisdiction over these cases.<sup>10</sup></p>

**An Example of how to use endnotes to elaborate:**

**Text above the line:** "In the meantime, Congress responded with legislation stripping federal courts of jurisdiction to hear habeas petitions."<sup>7</sup>

**Text below the line:**

<sup>7</sup> See Military Commissions Act of 2006, Pub. L. No. 109-366, 120 Stat. 2600. Prior to the passage of the acts, Congress had granted federal district courts, "within their respective jurisdictions," the authority to hear applications for habeas corpus by any person who claims to be held "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. §§ 2241 (a), (c)(3) (2000) (amended 2005, 2006). After the Supreme Court held in *Rasul v. Bush*, 542 U.S. 466, 484 (2004), that the habeas statute extended to aliens at Guantanamo Bay Naval Base in Cuba, Congress responded with the Detainee Treatment Act of 2005. *Boumediene*, 476 F.3d at 985 (citing Detainee Treatment Act of 2005, Pub. L. No. 109-148, 119 Stat. 2680 (DTA)). The DTA amended 28 U.S.C. § 2241 to eliminate habeas corpus jurisdiction, and virtually any other form of judicial review, for aliens held in military custody at Guantanamo Bay. *Boumediene*, 476 F.3d at 985 (citing DTA § 1005(e)(1)). A year later, the Military Commissions Act (MCA) went further by eliminating habeas corpus jurisdiction (and, again, other forms of review) for any alien, wherever seized or held, who has "been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination." MCA § 7(a), 120 Stat. at 2636; Richard H. Fallon, Jr. & Daniel J. Meltzer, *Habeas Corpus Jurisdiction, Substantive Rights, and the War on Terror*, 120 HARV. L. REV. 2029, 2060 n.122 (2007). In addition, section 7(b), 120 Stat. at 2636, specifies that the DTA's elimination of federal habeas jurisdiction applies to all post-9/11 cases, pending or otherwise. Fallon & Meltzer, *supra*, at 2060 n.122.



<p>2. <b>Second paragraph:</b> A description of the important issues raised in the main case and the reason why the case and those issues are important.</p> <p>3. <b>Third paragraph:</b> An outline of your Comment. First, state the goal of your Comment; second, tell the reader what you will do in each section of your Comment; and third, conclude with your thesis.</p> <p>Note: Use the device "this Comment" in the third paragraph and whenever you wish to address the reader to map out what you plan to do. After the third paragraph, however, you should keep such intrusions to a minimum.</p>	<p>The issues addressed by the <i>Boumediene</i> case extend beyond the obvious holding. This case raises questions of applicability of the United States Constitution to aliens, the relationship between citizenship and habeas rights, and the very nature of American sovereignty over Guantanamo Bay in Cuba. It also spotlights concerns about court's views on such constitutional tenets as the separation of powers between the executive, legislative, and judiciary branches of the government in the application of the Suspension Clause. James Madison drew attention to the importance of these canons, describing them as the "foundations of just government" and their structure as "the key to sustainability."<sup>11</sup></p> <p>This Comment's goal is to analyze <i>Boumediene</i> decision in terms of what it ignored. Part I examines the history of habeas corpus, the unique circumstances surrounding the inception of the Guantanamo Bay Naval Base, and introduces some of the precedential Supreme Court decisions. Part II details the court's holding in <i>Boumediene</i> and the reasoning behind it. Part III analyzes the shortcomings of the court's decision, and, in particular, proposes that the majority opinion in <i>Boumediene</i> misinterpreted legal precedent, ignored constitutional tenets, and overlooked overarching policy reasons that would necessitate a decision in favor of detainees. In conclusion, this Comment argues that the majority should have applied Kennedy-Harlan test to non-citizens-consistent with legal precedent and deep constitutional underpinnings-to prevent further human rights abuses.</p>
<p><b>Part I - Background</b> The background section introduces the cases and principles that place the main case and your analysis in perspective.</p>	<p>Habeas corpus is a writ employed to bring a person before a court, most frequently to ensure that the party's imprisonment or detention is not illegal.<sup>12</sup> Habeas corpus is "a writ antecedent to statute . . . throwing its root deep into the genius of our common law."<sup>13</sup> The writ, which appeared in English law several centuries ago,<sup>14</sup> became "an integral part of our common law heritage" by the time the Colonies achieved independence, and received explicit recognition in the Constitution, which forbids suspension of "[t]he Privilege of the Writ of Habeas Corpus . . . unless when in Cases of Rebellion or Invasion the public Safety may require it."<sup>15</sup></p>

<p><b>1. Economy of Information.</b> Your goal is only to introduce the information necessary for the reader to understand the main case and the basis for your argument about it. Do not actually discuss the details of the main case unless they are directly relevant to your analysis. <b>Use broad statements of the law in the text, then support the [statement] with citations and parenthetical summaries of key cases and arguments in endnotes.</b></p> <p><b>2. Introductions.</b> Your other goal here is to introduce other cases and important journal articles that you will use. Do not discuss them in detail, but make the reader aware of where they fit in the overall framework of law and policy addressed by your Comment.</p> <p><b>3. Relevance.</b> Everything in the background section should relate directly to the analysis you will give in Section E, below. Omit or endnote collateral matters.</p>	<p>This Suspension Clause protects the writ "as it existed in 1789," when the first Judiciary Act created the federal courts and granted jurisdiction to issue writs of habeas corpus.<sup>16</sup> United States adopted English common law and statutes enforcing common law<sup>17</sup> "in substance and effect."<sup>18</sup> And long before the United States acquired <b>Guantanamo Bay as a spoil of war<sup>19</sup></b> and established a Naval Base there, this statutory tradition blocked attempts to preclude habeas corpus by sending persons to remote destinations.<sup>20</sup></p> <p>Although the Supreme Court recognized that the circumstances could exist when the government should not be required to produce people in response to habeas corpus petitions, the Court limited such situations to times of great crisis.<sup>21</sup> As a result, the exercise of the Suspension Clause is an exceedingly rare event,<sup>22</sup> because such was the intent of the Framers as expressed in the Constitution and interpreted by the Supreme Court.<sup>23</sup></p> <p>For over two hundred years it has been the province and duty of the judicial department to say what the law is; the established law of this land is that the judiciary is the final interpreter of the Constitution, and the Constitution is the supreme law of the land.<sup>24</sup> Thus, a law repugnant to the constitution is void.<sup>25</sup> Of course, the Court also had to confront the question of the limits of that "land," i.e. under what circumstances, if ever, should the United States Constitution be applied beyond the recognized borders of our nation. The Supreme Court previously had rejected a categorical rule that the Constitution should never apply to the trial of U.S. citizens overseas.<sup>26</sup> But it also denied habeas petitions from enemy aliens held at overseas military bases after they were tried and convicted.<sup>27</sup></p> <p>Further, the Supreme Court previously held that <b>the habeas statute<sup>28</sup></b> confers a right to judicial review of the legality of executive detention of aliens in a territory over which the United States exercises plenary and exclusive jurisdiction, but not "ultimate sovereignty."<sup>29</sup> Because the Court decided a question of statutory rights to habeas, it therefore did not have to explicitly decide whether the detainees had constitutional rights to habeas.<sup>30</sup></p>
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<p><b>Example of broad statement above the line and support below the line.</b></p>	<p><b>Text above the line:</b></p> <p>"And long before the United States acquired Guantanamo Bay as a spoil of war"<sup>19</sup> . . ."</p> <p><b>Text below the line:</b></p> <p><i>See</i> Kal Raustiala, <i>The Geography of Justice</i>, 73 <i>FORDHAM. L. REV.</i> 2501, 2536 (2005). "Guantanamo has remained in U.S. hands continuously since Cuba's capture in the Spanish-American War of 1898. It became an American possession (along with the rest of Cuba) as a spoil of war, and was then immediately leased to the United States upon the granting of Cuban independence. The lease, with its clause providing for termination only by the will of both parties, was renewed as part of a treaty with Cuba in 1934." <i>Id.</i> at 2536-37. This lease is "no ordinary lease." <i>Rasul</i>, 542 U.S. at 487 (Kennedy, J., concurring). Justice Kennedy went on to note that although "[i]n a formal sense, the United States leases the Bay; the 1903 lease agreement states that Cuba retains 'ultimate sovereignty' over it." <i>Id.</i>; <i>see also</i> Lease of Lands for Coaling and Naval Stations, Feb. 23, 1903, U.S.-Cuba, Art. III, T. S. No. 418. Further, the lease's "term is indefinite and at the discretion of the United States. What matters is the unchallenged and indefinite control that the United States has long exercised over Guantanamo Bay. Guantanamo Bay is in every practical respect a United States territory." <i>Rasul</i>, 542 U.S. at 487 (Kennedy, J., concurring).</p> <p><b>Text above the line:</b> "the habeas statute"<sup>28</sup> . . ."</p> <p><b>Text below the line:</b></p> <p>28 U.S.C. § 2241. 28 U.S.C. §§ 2241 (a), (c)(3) grants federal district courts, "within their respective jurisdictions," the authority to hear applications for habeas corpus by any person who claims to be held "in custody in violation of the Constitution or laws or treaties of the United States." The statute traces its ancestry to the first grant of federal-court jurisdiction: Section 14 of the Judiciary Act of 1789 authorized federal courts to issue the writ of habeas corpus to prisoners who are "in custody, under or by colour of the authority of the United States, or are committed for trial before some court of the same." Act of Sept. 24, 1789, ch. 20, § 14, 1 Stat. 82. In 1867, Congress extended the protections of the writ to "all cases where any person may be restrained of his or her liberty in violation of the constitution." Act of Feb. 5, 1867, ch. 28, 14 Stat. 385.</p>
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<p><b><u>Part II: Case Description</u></b>  <b><u>Section.</u></b> The case description follows the background section. This section should describe the holding and reasoning of the main case in detail.</p> <p><b><i>First paragraph:</i></b> Link the main case into the overall state of the law as you described it in your background section.</p> <p><b><i>Next:</i></b> Describe each holding in the main case and summarize the reasoning of the court. Support your statements with citations in endnotes.</p> <p>Resist the urge to analyze or critique the court's holdings and arguments. You will do that in the next section.</p>	<p style="text-align: center;"><b>Part II: Case Description.</b></p> <p>Instead, the court of appeals decided the question of constitutional right to habeas. In its holding, it vacated the district courts' decisions and dismissed the cases for lack of jurisdiction.<sup>31</sup> Judge Randolph's opinion (joined by Judge Sentelle) reasoned, inter alia, that <i>Eisentrager</i><sup>32</sup> established that habeas jurisdiction need not extend to aliens held outside the sovereign territorial jurisdiction of the United States.<sup>33</sup> Brusquely dismissing arguments that emphasize the special status of Guantanamo Bay and maintain that aliens detained there possess fundamental constitutional rights, the court held that the detainees possess no constitutional rights that could be the basis for contesting their custody.<sup>34</sup></p> <p>Judge Rogers's dissent rejected both the reasoning of the court and the conclusion.<sup>35</sup> But it paid little attention to the special status of Guantanamo, and appeared not to dispute the majority's conclusion that the detainees there lack even fundamental constitutional rights. It maintained instead that the MCA violates the Suspension Clause by withdrawing the preexisting statutory jurisdiction to conduct habeas inquiries that would have lain within the scope of the writ in 1789.<sup>36</sup></p>
<p><b><u>Analysis</u></b></p>	<p style="text-align: center;"><b>Skipped</b></p>

<p><b>Conclusion.</b> The conclusion is a very brief two-part summary of your comment. The first part should outline the problem posed in the main case. The second part should state and defend your analysis. After the reader skims your introduction and your conclusion, she or he should be able to understand the issues raised in the main case, the court's holding, and your analysis.</p>	<p style="text-align: center;"><b>Conclusion</b></p> <p>By a 2-1 split decision in <i>Boumediene v. Bush</i> the United States Court of Appeals for the District of Columbia Circuit foreclosed detainees' claims to constitutional rights. The court held that federal courts have no jurisdiction in habeas corpus cases arising out of Guantanamo detentions.<sup>97</sup> In support of its decision to defer to the power of the executive branch, the majority opinion twisted the precedent and disregarded the underlying philosophy of the Constitution to prioritize liberty over security.<sup>98</sup></p> <p>This selective reading of the precedent<sup>99</sup> by the appellate court and dredging up old decisions and dissents blurs the lines between separate branches of government: the judiciary stops being a check on the executive and legislative.<sup>100</sup> The court smothered these concerns raised by the vocal minority opinion by Judge Rogers. And it also chose not to employ the Kennedy-Harlan test<sup>101</sup> suggested by the Supreme Court in evaluating if the constitutional rights exist under these particular circumstances.</p> <p>The appellate court's analysis further wilts in light of both global and local policy concerns. Keeping people in detention without trial is not a "small sacrifice for the sake of national security,"<sup>102</sup> but a sacrifice of American values and foundations of our society.<sup>103</sup> The media coverage of civil rights abuses in these cases further inflames anti-American attitudes.<sup>104</sup></p> <p>The court of appeals missed the opportunity to address these issues. The court was so preoccupied with finding a case precisely mirroring the circumstances of this detention, that it overlooked the forest for the trees. If our executive branch acts in an unprecedented manner, then perhaps the judiciary should act as well, and not simply defer to the political powers. The court missed the opportunity to redeem the actions of the United States not only in the eyes of men detained without charges for six years, but also in the eyes of the whole world watching.<sup>105</sup></p>
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**Pro-tip: copy the Comment instructions into your Word template. Use them as placeholders.**

**Background Sections in Low-scoring petition (left) v. High-scoring petition (right)**

*As you read these examples, can you identify the problems with the petition on the left?*

The Court has yet to settle on a consistent theory in determining whether Establishment Clause is violated.<sup>12</sup> There are three tests. The three-prong Lemon test, focusing on the hairsplitting facts of each case.<sup>13</sup> The relaxed Lemon theory, or the endorsement theory, asks whether the 1) government has a religious purpose, and 2) whether such action has a religious effect.<sup>14</sup> The coerce theory, under which the establishment clause is violated only when the government acts and coerces people to take a certain view of religion.<sup>15</sup>

Until 2005, the endorsement theory focuses on whether a reasonable observer will conclude the government in endorsing a religion. However, in *Van Orden* and *McCreary County*, the Court modified the endorsement theory, and focuses on whether the government intends to endorse a religion.<sup>16</sup> A commentator criticized that the Court "imprudently shifted" from a "display-focused analysis and toward an actor-focused analysis," creating a recipe for "further confusion and uncertainty."<sup>17</sup> Indeed, the court reached opposite results with plurality opinions in *Van Orden* and *McCreary County*, both involved display of Tenth Amendment.<sup>18</sup> The Ninth court adjusted its approached accordingly.<sup>19</sup> The test leaves questions such as whose motives are relevant and what should be the applicable time frame unanswered.<sup>20</sup> Also, if violations are to be found, current precedents give little guidance on how such violation should be remedied.<sup>21</sup> These unresolved questions become the core of the *Buono IV*.

*Have you been able to spot problems with this section?*

**A. THE ESTABLISHMENT CLAUSE**

The Establishment Clause of the First Amendment to the U.S. Constitution states that "Congress<sup>19</sup> shall make no law respecting an establishment of religion . . ." <sup>20</sup> It was ratified in 1790<sup>21</sup> and continues to bear the indelible impression of its chief proponents, James Madison<sup>22</sup> and Thomas Jefferson,<sup>23</sup> whose views on religious freedom and church-state separation have been of monumental importance to the Supreme Court in defining the clause's meaning. Thus, the starting point for the Court's current Establishment Clause jurisprudence may be formally traced back to 1947, when the Court first ruled in *Everson v. Board of Education* that "[i]n the words of Jefferson, the clause against establishment of religion by laws was intended to erect a 'wall of separation between Church and State.'"<sup>24</sup> In recent years, however, the Court has split on what the purpose of the Establishment Clause is-and what Madison and Jefferson have to teach about it. Under one view, the clause's purpose is to prevent the kind of destructive social division that threatens to occur whenever government supports religious belief.<sup>25</sup> Under the other, the clause's purpose is only to prevent government from favoring any one religion above all others, thus leaving the government free to support religious belief in general.<sup>26</sup> And both views have served to affect the Court's creation, application, and rejection of constitutional tests for deciding when the government has crossed the line drawn by the Establishment Clause.<sup>27</sup>

**B. THE SUPREME COURT: TESTING FOR ENDORSEMENT**

Despite its division as to the purpose of the Establishment Clause, the Court has never been shy in its attempts to provide

*This background section on the left lacks internal structure: for starters, it does not explain what the Establishment Clause is. It then states that there are three tests, but makes it very difficult to identify what are those tests, how they developed or how they are applied today.*

*It mentions random case names, but does not explain what those cases are or which court decided them, Circuit or US Supreme. It provides no explanation how these cases fit in the overall framework of law” as instructed. What does “Ninth Circuit adjusted its approach accordingly” mean?*

*It uses obscure references such as “a commentator.” Who is this commentator and why do we care what the anonymous commentator had to say? Was it a Supreme Court justice? Or a poster on yahoo message boards?*

*Because it lacks details, the section as a whole seems anemic. It is much shorter than the better-developed (and more organized!) background section on the right.*

*Also note the lack of adequate footnotes. The petition on the left used 9 footnotes to support and develop the background section, the one on the right used 25.*

*What little Bluebooking appears here, is applied incorrectly: the case names are inconsistently italicized and the author used lower case court to refer to the US Supreme Court.*

effective standards for identifying violations of the clause.<sup>28</sup> It would not be until 1971, however, that the Court would finally provide its most definitive test for establishment in *Lemon v. Kurtzman*.<sup>29</sup> Under this test, government activity was unconstitutional if it either (1) lacked a secular purpose, (2) had a primary effect advancing or inhibiting religion, or (3) fostered an excessive government entanglement with religion.<sup>30</sup> Consequently, the "*Lemon* test" has become the Court's "paramount guiding framework"<sup>31</sup> for handling an ever-expanding catalog of establishment cases.<sup>32</sup> At the same time, the Court has quickly discovered the test's limitations in producing consistent,<sup>33</sup> if not agreeable,<sup>34</sup> results—a reality made most evident by the Court's decision in recent years to collapse "*Lemon*'s first two prongs into the single query [of] whether a 'challenged governmental practice either has the purpose or effect of 'endorsing' religion . . . ." <sup>35</sup> And as the chorus of voices on the Court denigrating *Lemon* grows ever louder,<sup>36</sup> just what the Court plans on doing to resolve a rising litany of conflicting lower court holdings regarding the display of religious symbols on public property<sup>37</sup> remains an open question.<sup>38</sup>

### **C. GOVERNMENT LAND SALES AS A REMEDY TO ENDORSEMENT**

But while the Court has continued to vacillate on the issue of when public displays of religious symbols "endorse" religion, federal and local authorities alike have tried to preclude it completely by cutting it off at its apparent source: government ownership of the land on which these symbols rest.<sup>39</sup> Hence, by transferring this land to private owners who also desire the symbol's display, these authorities maintain that they have effectively eliminated any possibility of "endorsement"—at least so long as the display of religious symbols on private land by private actors is protected under the First Amendment.<sup>40</sup> And the Seventh Circuit largely confirmed this view in a series of

	<p>decisions starting in 2000<sup>41</sup> that have since become the main authority on this question.<sup>42</sup> Indeed, as the circuit has explained, "[a]bsent unusual circumstances, a sale of real property is an effective way for a public body to end its inappropriate endorsement of religion."<sup>43</sup> Yet, the Ninth Circuit refused to adopt this presumption in <i>Buono IV</i>, thus producing a legal split that will likely have profound ramifications for the future of the Establishment Clause.<sup>44</sup></p>
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**Tricking the Petition Graders,  
Or How to Win Easy Points for Use of Authorities and Bluebooking Mechanics  
in Your Petition Text (not the Bluebook Exercise)**

Tips from Nadia Wood.

These opinions are strictly my own and do not reflect official Law Review policy on grading.

1. The graders follow the grading rubric. They are not looking for a perfect petition; they are merely looking to see if your petition has certain qualities that warrant it a corresponding score from the rubric. They are busy, some have jobs, others summer classes, others just want to enjoy the nice weather or vacation. Therefore, some categories of grading are likely to be done by mere "scanning" rather than close examination. **Here are some easy strategies for racking up points in the Use of Authority category:**

- **One more time, lest you forget: Insert Endnotes Frequently!** Drop an endnote every other sentence or so. Everything you say must be supported. If you have less than 75 endnotes, you are probably doing it wrong. When the reader will scan your petition, they will be looking for those superscripts marking endnotes. Paragraphs void of endnotes will set off red flags.
- **The endnotes should be substantive.** The endnotes should generally be more than just "*id.*" Use endnotes to elaborate on your points. Use sentences, parentheticals, cross-references. Side-by-side handout has an example of a long endnote. Here's a short but substantive one:

**Above the line:**

Originally placed by the Veterans of Foreign Wars ("VFW") in 1934 as a memorial to World War I veterans,<sup>1</sup> a five-to-eight foot tall Latin cross<sup>2</sup> currently sits atop Sunrise Rock in the Mojave National Preserve covered by a plywood box.<sup>3</sup>

**Below the line:**

1. The original wooden cross erected by the VFW in 1934 no longer exists. To this end, the ongoing presence of a Latin cross atop Sunrise Rock over the last 75 years-including its current version-has been due to private parties replacing the cross several times since 1934. *Buono v. Kempthorne (Buono IV)*, 527 F.3d 758, 759-60 (9th Cir. 2007).
2. A Latin cross physically consists of "two arms, one horizontal and one vertical, at right angles to one another." *Id.* at 758. As such, the Latin cross is undisputedly "the preeminent symbol of Christianity" and "not a symbol of any other religion." *Id.* at 759.
3. *Id.*

### Another example of a substantive endnote:

#### Above the line:

In recent years, however, the Court has split on what the purpose of the Establishment Clause is-and what Madison and Jefferson have to teach about it. Under one view, the clause's purpose is to prevent the kind of destructive social division that threatens to occur whenever government supports religious belief.<sup>25</sup> Under the other, the clause's purpose is only to prevent government from favoring any one religion above all others, thereby leaving the government free to support religious belief in general.<sup>26</sup>

#### Below the line:

25. *See, e.g.,* *McCreary County, Ky. v. ACLU of Ky.*, 545 U.S. 844, 883 (2005) (O'Connor, J., concurring) ("Allowing government to be a potential mouthpiece for competing religious ideas risks the sort of division that might easily spill over into suppression . . .").

26. *See generally* LEVY, *supra* note 19, at 124-25 (explaining the "nonpreferentialism" view of the Establishment Clause which only bars the government from giving "one church or religion an exclusive position of power and favor over all other churches or denominations"). This view's supporters tend to argue not only that government can favor religious belief in general, but that it should. *See McCreary*, 545 U.S. at 887 (Scalia, J., dissenting) ("Those who wrote the Constitution believed that morality was essential to the well-being of society and that the encouragement of religion was the best way to foster morality.").

- **Cite most of the sources in the packet.** Try and cite as many sources as you can. The graders will scan through the endnotes to see if you only stuck with cases, which are obvious and easy to cite, or did you use a wide variety of sources. You do not have to cite every source in the packet, but you should try to cite most of them. The packet will include obvious sources on point; if you already used those sources, try to find the same argument supported by a different source and cite that one.
- **Don't be afraid to cite authorities contrary to your position!** This is not a brief, you are not trying to hide from authority that does not support your client's position. This is a petition where you are graded on the number of sources used and a variety of signals; sources contrary to your position are a perfect opportunity to get points in both categories. Introduce these sources with *but see* or *contra* signal.

- **Use of a variety of Bluebook signals.** This is another category most likely to be graded by "scanning" the endnotes. The graders will scan the petition for signals other than no signal at all or ubiquitous "*see*." Indulge them! Read pages 54-55 in the Bluebook, then use your newly-acquired knowledge of various citation signals to embellish your citations liberally. You will be given plenty of sources that argue different viewpoints. Whenever you make an assertion, you can seize the opportunity to jazz up the endnote by including contradictory sources using "*contra*" and "*but see*" signals. Throw in an "*accord*" or a "*see also*" if you are discussing a case from another jurisdiction that supports your point instead of stringciting. There are differences between those signals, but don't sweat them. Again, you are dealing with busy graders who are not thrilled about reading your papers in the first place. They will not be examining a random endnote in a random paper to determine if you used a *but see* where *contra* should have been used. They will be scanning the endnotes mentally going "oooh, *compare . . . with . . .* and a *cf.*, too! Check for Use of Authority!"

## 2. Skating by Bluebooking.

It pains me to say this, but do not obsess over the Bluebooking in the endnotes portion of your petition: get the basics right, and you are well on your way to a decent score in the Bluebooking mechanics category. Here's why. The people grading your petition are rising 3Ls who just spent their entire 2L year Bluebooking. They can identify most common errors by sight, and they will also be given a list of properly Bluebooked sources in the packet. But, remember, they are busy people. They are unlikely to consult the list on every source and every petition. And no matter how good these students are, they are unlikely to remember off the top of their heads how to cite the more obscure sources like blog posts or Kosovo constitution. Further, some of the people reading your petition just flat out hate Bluebooking (yes, there are those even on law review), and became Article Editors so they will never have to worry about citing The Federalist properly again. They will see the obvious Bluebooking errors, but not the more obscure ones. In addition, your time is very limited, so prioritize Bluebooking exercise over bluebooking the endnotes on your petition. After you finish the Bluebooking exercise, go back and look through your endnotes. You will find things to fix, because finishing the exercise is much harder and forces you to learn Bluebook. It is also graded solely by the Lead Managing Editor who does know how to cite an English Reporter from the thirteenth century by heart.

So for now, let's worry about getting the sources close to proper Bluebooking without obsessing over the minute details (yes, I died a little on the inside just now.)

**Things you absolutely must know and use in your petition:**

- The entire Rule 2 on typeface conventions. Using the right font will make your citation look "right" even if you forgot an "at" in a short cite, or inserted a space between "n." and the footnote number. You are transitioning from brief writing, which is different from law review citation style. This rule explains how. Know it cold. Some highlights:
  - Every citation starts with a capital letter and ends with a period. Scan through your endnotes. Does each one have a period at the end? Fix it!
  - Signals are always italicized, unless used as verbs. BB 2.1(d). Thus, these are both correct:

1. *See, e.g.,* Parker Drilling Co. v. Ferguson, 391 F.2d 581 (5th Cir. 1968).

2. For an analysis of risk allocation, *see* Parker Drilling Co. v. Ferguson, 391 F.2d 581 (5th Cir. 1968).

Note that only the first comma in the *See, e.g.,* signal is italicized, but not the second. BB 2.1(f). It is a common error immediately obvious to the people grading your petition. It seems silly, but for the purposes of Bluebooking the endnotes, knowing which commas get italicized is more important than knowing how to cite Canadian statutes. Graders just spent the entire year fixing these improperly italicized commas after signals and case names, whereas they probably only saw a weird source cited once or twice. Ditto for en-dashes and em-dashes. Use en-dashes, not hyphens, for page ranges, because that's what the graders are used to seeing and fixing.

- Does anything weird you out about these two cites above? After a year of legal writing, you might yearn to italicize those case names. Resist the temptation! **Do not** italicize the case name in the endnotes, **unless it is a shortcite or grammatically part of a sentence**. BB 2.1(a) and BB 2.2(b)(i). Do, however, **italicize the case names above the line** in the text. BB 2.2(a)(i). Know and understand the difference between font conventions above the line and below the line!

Here's an example to make this more palatable:

**Above the line:**

The states are known for passing unconstitutional laws that later get invalidated by the Supreme Court, as was the case with *Loving v. Virginia*.<sup>65</sup>

**Below the line:**

65. With *Loving v. Virginia*, 388 U.S. 1 (1967), the Supreme Court invalidated Virginia's antimiscegenation statute. Prior to *Loving*, there were several cases on the subject of race-mixing, including at least one case, *Pace v. Alabama*, 106 U.S. 583 (1883), where the Supreme Court ruled that the conviction of an Alabama couple for interracial sex did not violate the Fourteenth Amendment.

Can you explain and support with rule citations why each instance of the case name in this example is italicized or not italicized?

- The same rule 2.1 also covers the fonts for law reviews and books, another two most commonly cited sources. Law reviews are like Neopolitan icecream, they use three different fonts: author's name in ordinary (straight) font, name of the article in italics, and the name of the journal in which it is published in large and small caps. Use **Ctrl+I** for italics; **Ctrl+Shift+K** for large and small caps in Office for Windows, **CMD+Shift+K** on Macs.

You must get all three flavors correct:

David E. Bernstein, *When Justice Fails*, 65 VA. L. REV. 557, 563-72 (1979).

Look in Table T. 13 for abbreviations of periodicals.

The books are slightly easier, they just use large and small caps:

RICHARD KLUGER, *SIMPLE JUSTICE* 25 (1990).

Note that "25" refers to the page number where the material is found in that book (aka, pincite). It is not part of the title, yet it is not offset by "at." An exception exists, however, if the title ends in a numeral (BB 15.3):

MICHAEL C. BLUMQUIST, *DIVINING CONGRESSIONAL INTENT ON COPYRIGHT PROTECTION FROM S. 22*, at 25-27 (3d ed. 2010).

- Be prepared that at least one source in your packet will be a complete oddity. The past years have included a dollar bill and a political cartoon. It will not be explicitly covered by any Bluebooking rule. You should try and cite it anyway. Find the closest rule and format the citation the best you can, include a parenthetical describing the source.
- Six most important citation forms you should know: cases, constitutions, statutes, law reviews, books, web sources. But wait, isn't this everything in the Bluebook you say? No. You can look up how to cite international sources, letters, blog posts, speeches, debates, and other miscellany. **Rule 10.8.1. on unpublished cases and 10.9** for short case forms, however, you must know cold.
- Incidentally, **Rule 10.9** contains another important rule you need to know for endnotes: **the Five Footnotes Rule**. You can only use a short form for a case if it has been cited within the preceding five footnotes.
- You absolutely cannot use *id.* if the previous endnote contains more than one source. Sources in parentheticals do not count. **BB 4.1.**
- Know and understand how to use *supra*! **BB 4.2.** You will be using it liberally in conjunction with live cross-references explained in the Advanced Tech Savvy portion of this seminar. Side note: "live cross-reference" refers to the way Word references endnotes. "Internal cross-reference" is a BB 3.5 creation that essentially says "I will address it later" or "I already addressed it above." **Internal cross-references are banned in the petition!** Live cross-references, on the other hand, are required to keep your sanity.
- Quotes and omissions, **Rule 5**, is yet another important rule you must know in its entirety because if you start your sentence with "...habeas is an important constitutional right," your grader will twitch slightly and start mentally subtracting points.
- Quickie: Read **Rule 6.1** on spacing and understand why "S.D.N.Y." has no spaces but "S. Ct." does, and why "F. Supp. 2d" does too, but not "F.3d." Those last two are the most obvious ones, and most frequently cited.
- Easy points: Remember to spell out "United States" when it is the entire name of the party name, for example, United States v. Crawford. **BB 10.2.2.**
- When discussing U.S. Code in the text above the line or in a substantive end note below the line, use the word "section." When citing, use § symbol. **BB 12.10(c).**
- Page numbers for everything from cases to books: drop repetitious digits but leave at least two. **BB 3.2.** Thus, 1065-69 is correct, but 1065-1069 is not, and neither is 1065-9. 25-29 is correct, but 25-9 is not. Note that you should use en-dashes for the page ranges. The Bluebook by default allows hyphens. You should cross out that option on p.73 of

your Bluebook. Minnesota Law School journals all use en-dashes for page ranges, not hyphens, and the graders just spent a year replacing hyphens with en-dashes. They have been told that hyphens are acceptable on the petitions, but why irritate them unnecessarily when you can score easy brownie points?

- Parentheticals in the endnotes generally begin with a present participle (holding that, arguing that, etc.).
- **You cannot *supra* a case or a statute.**
- Correct placement of quotation marks: "Katie";
- Correct placement of footnote reference: Katie;<sup>1</sup> or Katie.<sup>1</sup> but Katie<sup>1</sup> - and Katie<sup>1</sup>: (rule 1.1).

**WRITING A CASE COMMENT**  
**Based on materials by Mahesha Subbaraman**  
**(read this on your own time)**

A case comment requires you to "comment" on a controversial circuit court or Supreme Court decision. This means explaining in non-legalese terms to a lay audience what was decided in the case-at-hand, the legal significance of this holding (i.e., how it affects society in general and the area of law in which the case arises), and, most importantly, what you think is right (or wrong, or sensible, or nonsensical, or just plain interesting) about the case-at-hand.

**General Observations**

1. Academic (or scholarly) writing is different from writing a legal brief or memo-you are not being asked to be "predictive" or "neutral" in your analysis (like a memo), nor are you being asked to argue some specific point-of-view in terms of guiding precedents (like a brief).
2. You are likely going to be asked to write about a legal topic that you know almost nothing about. Don't let this get to you. The point is to show how quickly you can learn "on the job."
3. Writing a petition can be fun if you have a real argument to make-otherwise, it will bore the living daylights out you. So find something in a case that makes you care about it.
4. There are no "right" or "wrong" answers to be found while writing a petition-only "better" answers (i.e., answers that are well-reasoned and supported) and "worse" ones.
5. The secret to petition writing is realizing that you are actually writing two essays at the same time: one essay above the line, and another below the line through your footnotes. But don't bury anything that is essential to your argument in the notes. The notes are to show your engagement with the sources; the above-the-line text is where you show off your legal analysis skills.
6. The other secret to petition writing is realizing that how well you explain the case-at-issue is just as important as how well you criticize or applaud its ultimate holding.
7. You will be given a packet of sources that you will need to cite in support of your arguments. Don't drown in them (i.e., the relevance of the sources will become more and more clear as you move through the process), and also remember they are all that you've got.
8. It doesn't matter how good a writer you are; if you do not pay attention to simple details like organization, Bluebook formatting, and supporting your arguments below-the-line, you will fail.
9. You are going to need to put a footnote nearly after every sentence you write. Get used to it (1:1).
10. Two weeks will fly by. Get your act in gear and remember: timing is everything.



### **Selecting a thesis for your Comment**<sup>1</sup>

A case comment evaluates both the result and the reasoning of a judicial opinion. A successful case comment always looks beyond a court's articulated reasons for its decision and beyond the dissent's articulated reasons for disagreement. It is, therefore, never sufficient to argue that the majority is correct for the very reasons the majority advances, nor is it sufficient to argue that the majority is wrong for the very reasons advanced by the dissent. In sum, your comment must go beyond paraphrase to analysis. The following are examples of the kinds of theses that meticulous analysis can yield:

- 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; the court creates an exception to a constitutional provision that could swallow the rule.
- The result was correct, but it must be narrowly construed or it will have a chilling effect on remedial measures by the legislature.
- 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.
- The result was correct, but the court never stated the real reason for its decision, which is X.
- The result was correct, but the court's reasoning obscured the proper inquiry.
- The result was incorrect; the court relied unconsciously on long repudiated constitutional tenets.
- The result was incorrect; the court failed to consider a significant issue which would have been dispositive.
- The result was correct; however, the decision appears to overrule *sub silentio* an important line of cases.
- The result was incorrect; it will result in an inefficient allocation of resources.
- The result was incorrect; the court misconstrued or misused precedent.

### **Formatting**

Three elements in terms of formatting your petition that you need to pay attention to:

1. How your petition physically looks (i.e., margins, font size, page numbers, etc.). You will be DISQUALIFIED if you do not follow these rules, so read them carefully.
2. How you structure/organize the content in your petition. Again, follow the rules to the letter!
  - I. Title
  - II. Introduction
  - III. Legal Background
  - IV. Case Description
  - V. Argument
  - VI. Conclusion

<sup>1</sup> Adapted from ELIZABETH FAJANS & MARY R. FALK, SCHOLARLY WRITING FOR LAW STUDENTS 8-9 (3d ed. 2005).

3. How you format the source citations in your petition-BLUEBOOK USING WHITE PAGES ONLY!

More on structure and Bluebooking later

### **Petition Writing Stages**

1. Read the entire case (including any concurrences or dissents). Highlight the parts that:
  - a. Constitute the central "holdings" or "big ideas."
  - b. Constitute the reasoning/support/justification for the holdings.
  - c. Interest you.
2. Initial brainstorm. Spend an hour writing out on a legal pad (or in OneNote) all the ideas, thoughts, observations, and questions that come to mind as you think about the case.
3. Start reading through the sources.
  - a. Case history (appellate and lower court decisions).
  - b. Supporting/related case precedents.
  - c. Historical Materials (legislative background / constitutional history).
  - d. Neutral background material (e.g., newspaper and magazine articles).
  - e. Legal scholarship (i.e., law review articles, books, and treatises).
  - f. Popular commentary (op-eds, weblogs, etc.).
  - g. Exotic and mystery sources.

Read the sources actively, constantly thinking about how they are relevant to your problem. Consider how each source:

- (1) Best support any potential arguments that you want to make.
  - (2) Contradicts your assertions, can be used to present (and knock down) an alternative viewpoint, or at least embellish your citations with *But see* and *contra* signals.
  - (3) Show to the reader that you are capable of handling a wide variety of sources, as well as effectively using Bluebook devices like explanatory parentheticals.
4. Flag paragraphs and sections of sources that stand out to you. Have a Word file open and copy and paste them verbatim if you can. Tag the quotations you pull from these sources with rough approximations of Bluebook citations (including pin-cites). You can clean up the citations later. There are other ways to tag your sources: in Adobe Pro with comments; in your packet with sticky notes and flags; on a legal pad referencing packet page numbers. Find a way that works for you, but if you are not a techie, now is **not** the time to learn.
5. Start outlining:
  - a. Figure out what your argument will be. This is the first step, the most important step, and the hardest step. **Remember:** an argument is not a grocery list of points (or criticisms) about a case-it is a coherent, "big picture" idea that integrates all of the case analysis that you are prepared to provide in your petition.

- b. Do not worry about trying to make your argument "bulletproof." This is not going to happen. Instead, focus on making your argument as strong as possible.
  - c. Build your outline around the argument that you want to make.
  - d. Anticipate dividing your background and argument sections into sub-points. Do not, however, go beyond one level of lettered sub-points (e.g., A., B., C.).
  - e. Remember that you have only 10 pages above-the-line and 10 pages below-the-line to use. Be ambitious, but do not risk biting off more than you can chew.
6. Once you are satisfied with your outline, review the sources you have flagged to determine if they can be used to support the argument. Squeeze every drop out of them, and if you find that you are coming up short, dive back into the petition packet to look at other sources.
7. Compose your first draft.
  - (1) Begin by setting up the skeleton of your article in terms of its title and the headers for each of the five major sections described earlier. Allocate pages for each section.
  - (2) Don't fuss over your writing if you can avoid it. If you spend three days working on just one paragraph, you will never finish in time. Budget your time wisely.
  - (3) Use every page that you have at your disposal. Doing otherwise makes your petition look either lazy or rushed. You can "overwrite" in your drafts-write more than would fit on 10 pages, then cut it down. Your final petition, however, must be exactly 10 pages of text and 10 pages of notes, not one word more.
  - (4) Be prepared as you are writing to have new ideas pop into your head about how you can revise your argument or the kinds of sources you can cite. Take note of them.
  - (5) Also be prepared to confront doubts that may arise about how good your argument is. Don't second-guess yourself too much, or you will never get done on time.
8. Turn your first draft into a final draft.

Once you get done writing your first draft, you likely will not have much time left to change what you have written. To this end, focus on fixing "small things" that make a big difference:

- (1) Make sure every assertion you make above-the-line has an endnote attached to it.
  - (2) Use signals like *but see* and *see generally* to embellish otherwise mundane citations.
  - (3) If you have space, anticipate counter-arguments to your analysis and refute them.
  - (4) Revise your comment's title, and the heading and subheadings for section sub-points as needed.
  - (5) Check paragraphs for topic sentences and roadmaps, and keep your sentences short.
9. Remember what you learned in Legal Writing: topic sentences, transitions, no passive voice, original word choice. They still matter!
10. After you finished, re-read the instructions again! Make sure your title, your page numbers, your headings-everything!-complies with the rules set forth in the instruction packet.

11. Proofread first thing in the morning when your mind is fresh. Read every word out loud. Take a break to do Bluebooking, and then proofread the text again. Put a ruler or another, blank, piece of paper under each line when you read. This will force you to read slowly and pay attention to each word and catch errors spellchecker never would.

Final proofing: search for commonly misused words that spellcheck will not find, like "Statue," "pubic," and "tortuous" instead of "tortious." (Protective statutes = legal protections so important there is a law. Protective statues = gargoyles.) Also search for non-italicized *supra* reference: Ctrl+F to find, type in *supra*, click drop down arrow the right, select Advanced Find, hit Ctrl-I twice. You should see "Font: Not Italic" appear below the word. Do the same for *id.*, *see also*, *contra*, *but see*, *accord*, *cf.*, *see generally*. These are usually only used as signals and should always be italicized. Plain "see" would yield too many false positives, so don't bother.

For another excellent source on petitioning, see EUGENE VOLOKH, ACADEMIC LEGAL WRITING 321–57 (5th ed. 2016).