

The Self-Graded Draft: Teaching Students to Revise Using Guided Self-Critique*

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If there is anything more difficult than editing another person's writing, it is editing one's own writing. Like all editors, the self-editor may find it difficult to focus on different types of writing problems — substantive, organizational, and mechanical — as he or she reviews page after page of prose. In addition, however, the self-editor often lacks the psychological distance necessary to distinguish between the information on the printed page and the information still inside the writer's head. The "self-graded draft" is one attempt to combat these difficulties.

The self-graded draft is a self-editing exercise that legal writers can use to identify strengths, weaknesses, and omissions in their writing. It is designed to be an "objective," focused, critiquing method that allows little room for the self-delusion that often interferes with self-editing. Essentially, the exercise requires the writer to find, mark, and evaluate individual substantive, organizational, or mechanical elements within each part of the document. The process of finding the elements and of physically marking them — e.g., with a highlighter — forces the writer to focus his or her attention on one element of the document at a time. This focus often helps to provide enough psychological distance to allow the writer to conduct an objective evaluation of his or her writing and, ideally, to improve it.

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The self-graded draft can also be used effectively by legal writing teachers who want to spend more time focusing on substance and analysis and less time persuading students to include the necessary analytical elements within a document. The exercise was born out of my frustration during teacher-student conferences. A student would be upset with low marks and would insist that he or she had included a required analytical element — for example, an explicit rule. I had not been able to find the element, and almost invariably, the student would be unable to find the element as well. Although, perhaps, the student had articulated the element *mentally*, the element had not been included in the *written* product.

Missing elements put teachers in a difficult position while critiquing. Frequently, the teachers are unable to determine why the student failed to include the elements. Was the student a lazy or ineffective writer? Or did the student have such a poor understanding of the substantive law that he or she was simply unable to adequately articulate the elements? At best, documents with missing elements require the teacher to combine a substantive critique with advice about including the necessary elements. At worst, a substantive critique is postponed until after the next draft, when, it is to be hoped, the required elements will finally be included.²

If students complete a self-graded draft, on the other hand, the teacher can begin substantive discussions sooner. Although completing a self-grading exercise will not necessarily ensure that students write a perfect rule, a perfect explanation, or a perfect application, it will ensure that, for better or worse, the writer has articulated the needed elements on paper. If those elements are substantively wrong or otherwise ineffective, the teacher discovers this ineffectiveness right away and can immediately work with the student on the now more apparent substantive problems.

The self-graded draft does not dictate a particular content or organization to the student, although it employs agreed-upon substantive and organizational guidelines for legal documents. It does not require that the student make any particular changes in the document. What the self-graded draft does is focus the revision process.

² In many courses, the second draft is the final draft, and so the best opportunity for learning is over by the time the teacher discovers what the student really meant to say.

First, the exercise focuses the writer's attention on two types of locations within the document: physical locations, such as beginnings and endings of point heading sections; and "intellectual locations," such as the articulation of a rule, the application of a rule to facts, or the conclusion to the discussion of a legal issue. Then, while the writer's attention is focused, the exercise asks the writer to consider revision questions that are focused on the same physical or intellectual location. The writer will then be able to make any revision decisions based on an accurate understanding of what the draft actually says, rather than on an inaccurate presumption that the draft says what the writer meant to say.

In this article, I will first explain why the predictability of legal documents, legal writers, and legal readers makes an objective method of self-critique particularly useful in legal writing. I will then discuss how I design self-grading guidelines and explain various methods for incorporating the self-grading process into a legal writing course. Finally, I will address some of the challenges I have faced when assigning the self-graded draft to students, and discuss ways to deal with these challenges. In appendixes, I have included two samples of self-graded draft guidelines for use in a three-draft Memorandum Assignment, as well as a short illustration of the physical marking that the self-graded draft requires.³ Throughout the article, I have tried to illustrate the usefulness of the self-graded draft by providing concrete examples of possible self-grading tasks.

I. THE PREDICTABILITY OF LEGAL DOCUMENTS, LEGAL READERS, AND LEGAL WRITERS

An "objective" or focused critiquing method is particularly helpful in legal writing because of the predictable structure of legal documents and the predictable behavior of legal readers and legal writers. Most legal documents have a set format, and they require analytical elements that are usually found at predictable "intellectual locations" within the format. In addition,

³ "Macro Draft Self-Grading Guidelines," in Appendix A, *infra*, are designed for the first or "Macro" draft (i.e., the draft focused on large-scale and content concerns); "Micro Draft Self-Grading Guidelines," in Appendix B, *infra*, are designed for the second or "Micro" draft (i.e., the draft whose focus broadens to include smaller-scale concerns). See Mary Kate Kearney & Mary Beth Beazley, *Teaching Students How to "Think Like Lawyers": Integrating Socratic Method With the Writing Process*, 64 TEMP. L. REV. 885, 892-94 (1991) (discussing the use of focused drafts in legal writing courses). Appendix C, *infra*, illustrates how the Micro Draft Self-Grading Guidelines could be used.

legal readers, like all readers, pay peak attention at predictable physical locations in documents.⁴ Legal writers, as well, have predictable self-editing problems that focused revision methods can help to combat.

A. Predictability of Legal Documents

As many writing teachers have been trying to tell their students for years, legal documents usually follow prescribed formats. For example, most courts require that appellate briefs contain the following substantive components: a question presented, a statement of the case, a summary of the argument, an argument (divided into point heading sections), and a conclusion. Each of these components usually contains certain agreed-upon analytical elements. For example, when making a legal argument, it is expected that 1) the writer will articulate a rule for the court to apply, 2) the writer will cite to the best possible authority for that rule, 3) the writer will explain any ambiguities in the rule, usually by illustrating how the rule has been applied in the past, and 4) the writer will explain how the rule should be applied in the pending action.⁵

These predictable “intellectual locations” within legal documents are the first level of focus in the self-grading exercise. The writers are asked to find, mark, and review the agreed-upon elements within a given document or section of a document. Finding and marking the elements can help in two ways. First, if a writer cannot find an element in order to mark it, the writer knows, objectively, that the document may be incomplete.⁶ Second, if the writer can find and mark an element, the

⁴ See, e.g., MARY BARNARD RAY & JILL RAMSFIELD, *LEGAL WRITING: GETTING IT RIGHT AND GETTING IT WRITTEN* 228-29 (2d ed. 1993).

⁵ Alert readers will recognize these elements as the core of an “IRAC” (Issue-Rule-Application-Conclusion) or “IREXAC” (Issue-Rule-Explanation-Application-Conclusion) analytical structure. As I have noted elsewhere, I believe IREXAC almost always serves as a valid organizational structure for the analysis of a legal issue. See Mary Beth Beazley, *Fire, Flood, Famine & IRAC? THE SECOND DRAFT* (The Legal Writing Institute), Nov. 1, 1995, at 1. Many of those who do not believe that IRAC is a valid formula still recognize that certain elements — for example, rule, explanation, application — almost always appear in strong legal analysis. See, e.g., Jeffrey Malkan, *IRAC: A True Story, THE SECOND DRAFT* (The Legal Writing Institute), Nov. 1, 1995, at 18. I do not mean to suggest that IREXAC tells students all they need to know about legal analysis; I do suggest that it provides a basic checklist of items that should almost always be included.

⁶ I purposely say “may be incomplete” here because I recognize that no formula can perfectly predict what will make a document work. If my students are unable to find certain elements, I ask them to decide whether they have erroneously omitted the element, or whether the element is not needed in their document for some reason — and

writer is now focused on it, and the exercise can help the writer to improve that element by asking questions about the element's effectiveness. For example, the guidelines can ask the writer to scrutinize each point heading section or sub-section within a brief and highlight the rule that is being discussed and/or applied. If the writer finds a rule, the guidelines can ask whether the rule is 1) so abstract and/or controversial that it needs thorough explanation or illustration or 2) so concrete and/or non-controversial that it needs little explanation or illustration.⁷ After finding and marking each element and after answering focused questions about those elements, the writer can make a better-informed assessment of what revision, if any, is needed.

B. Predictability of Legal Readers

The second reason that the self-graded draft can help improve legal writing is that legal readers behave in predictable ways during the reading process. Like most readers, legal readers subconsciously pay more attention to, and thus put more emphasis on, information that appears in particular physical locations within a document.⁸ These "natural positions of emphasis" occur before and after a physical break in the document, i.e., wherever there is white space. Thus, natural positions of emphasis include titles and headings, as well as the first and last sentences in document segments (e.g., the Statement of the Case, the Argument), the first and last sentences in point heading sections, and even the first and last sentences in paragraphs. To a lesser degree, information at the beginning or ending of a sentence is also in a position of emphasis.⁹ Finally, within the sentence itself, the reader pays more attention to the information expressed in the subject-verb combination, with particular emphasis on the verb.¹⁰

they have to give me the reason. I find that asking them to justify omitted elements is a helpful task. In the process of trying to justify an omission, students often realize that they *do* need to include the element; in the alternative, they consider what they must do to fulfill the reader's needs.

⁷ See, e.g., LAUREL CURRIE OATES, ANNE ENQUIST, & KELLY KUNSCH, *THE LEGAL WRITING HANDBOOK* 185-91 (1993); RICHARD NEUMANN, *LEGAL REASONING AND LEGAL WRITING* 260-62 (2d ed. 1994); CHARLES CALLEROS, *LEGAL METHOD AND LEGAL WRITING* 257-61 (2d ed. 1994).

⁸ See, e.g., RAY & RAMSFIELD, *supra* note 4, at 228; see also OATES, ENQUIST, & KUNSCH, *supra* note 7, at 294.

⁹ See, e.g., JOSEPH M. WILLIAMS, *STYLE: TEN LESSONS IN CLARITY AND GRACE* 107-09, 146-51 (5th ed. 1997); see also OATES, ENQUIST, & KUNSCH, *supra* note 7, at 613-17.

¹⁰ This point is now a staple for most legal writing teachers. It was most famously

The self-grading exercise can include guidelines that can help the writer to exploit these positions of emphasis. The exercise can require the writer to mark various positions of emphasis within the document and to note what information is contained in these positions. Once attention is focused on the first sentence in each paragraph, for example, a writer frequently discovers that he or she is wasting these sentences on case citations and descriptions of authority case facts instead of exploiting these positions of emphasis by filling them with positive facts, statements of rules, or favorable assertions.

C. Predictability of Legal Writers

Finally, the self-graded draft is a useful editing tool because of the predictable behavior of most legal writers when they edit their own work. First of all, most writers lack focus when they edit. Many writers review their writing by reading and re-reading the document with no definite goal in mind. Some seem to be looking for typographical errors or grammar mistakes, hoping that substantive problems will leap out at them as they read. Essentially, they are reviewing the document and asking themselves, "Is this okay?"¹¹

The self-graded draft addresses this lack of focus by concentrating the writer's attention on various parts of the document and then asking focused questions. For example, instead of looking at a *sentence* and asking "Is this okay?" the writer completing a self-grading exercise is looking at the *application of law to facts* within a particular section and asking: "Did I echo the key terms from the rule when I applied law to facts? Did I include the legally significant facts?" This improvement in focus cannot help but improve the writer's ability to self-edit.

The second, and more difficult, problem self-editors face is the problem of psychological distance. Many writers find it psychologically impossible to really see what they have written.

articulated by Richard Wydick in a law review article that later became a book: RICHARD WYDICK, *PLAIN ENGLISH FOR LAWYERS* 23-32 (3d ed. 1994). See also WILLIAMS, *supra* note 9, at 41-70.

¹¹ When I first required my students to create "private memos" in which they asked for specific guidance about their writing decisions, this lack of focus was dramatically illustrated for me by one of my most memorable students. Her "private memos" occurred after every three or four sentences, when she would write, "IS THIS OKAY???" Obviously, this broad question did not help me overmuch in my quest to provide her with specific guidance. See Kearney & Beazley, *supra* note 3, at 894-97 (discussing use of the "private memo" in legal writing courses).

Those of us who have reviewed our own writing several weeks, months, or years after "polishing" it have had the experience of discovering glaring mistakes, inconsistencies, or other weaknesses. We are aghast; how could we have missed those mistakes? And yet, the phenomenon is not that surprising.

When writers write, they are, naturally, thinking about their complete message. When they later revise and edit, they see the words they wrote, and these (often inadequate) words remind their short-term memories of the complete message they had in mind when they were writing. The short-term memory then "tells" the brain the complete message, and the writers presume that the words they wrote contained the message. Actually, the short-term memory filled in the blanks: the complete message never made it into the written word.¹² This phenomenon creates an "eclipse of the brain":¹³ the short term memory "passes between" the written document and the writer's brain, "blocking" the writer from seeing and understanding the words that he or she actually wrote.

Self-grading can address this eclipse of the brain by forcing the writer to look at individual elements, sentences, and words, instead of at the document as a whole. The self-grading exercise does not ask the writer *whether* he or she included an element; it asks the writer to *mark* the very words that comprise the element. This marking forces the writer to discover for himself or herself what words and ideas actually made it onto the paper, and what words and ideas are still inside the writer's brain. The self-graded draft does not create the message; it simply helps to ensure that the document includes the complete message. If part of the message is not written down, the writer cannot find and mark it during the self-grading. In this way, the writer discovers what pieces of the message are missing, and is in a better position to make revision decisions.

The likelihood of an eclipse of the brain is why the success of the self-graded draft hinges on the physical marking of the elements. Most writing teachers have faced a student, angry about a bad grade, who swears that he or she has included the necessary elements. Yet, when asked in a conference to identify, for example, the place in the document where the law is applied to the facts, the student grows silent, and the teacher tries not

¹² Cf. Williams, *supra* note 9, at 63.

¹³ I am grateful to Professor Rapoport for suggesting this term to describe this mental phenomenon.

to smile, while the student flips through page after page, muttering, "I know it's in here." Accordingly, the self-graded draft guidelines might simply ask the writer "Did you articulate the rule?" The vast majority of writers, however, would answer "yes" without really scrutinizing their writing, and would deeply believe that they were being truthful. The physical marking of the elements forces the writer to perceive the message that he or she *actually wrote*, instead of the message that he or she *intended to write*.

II. DESIGNING SELF-GRADING GUIDELINES

Self-grading guidelines for any document or portion of a document are based on 1) agreed-upon requirements for that type of document or for an element within a type of document, 2) "markers" of good (or bad) examples of that type of document or that element within a document, and 3) focused questions or comments that can serve as guidelines to help the writer improve the document. The self-grading exercise also provides an opportunity for the writer to record, or "memorialize," what he or she discovered during the self-grading process.

A. Requirements, Markers, and Focused Questions

To identify agreed-upon requirements for a type of document, we need go no further than lecture notes or textbooks. For example, most legal writers agree that when applying law to facts, the writer should repeat the "key words" of the rule — i.e., the words or phrases that are in controversy in the current case.¹⁴ In my courses, I refer to the "key words" as the "phrase that pays," and I tell my students that when they apply law to facts, they should expect to write a sentence that translates approximately as "*phrase that pays* [equals or does not equal] *legally significant facts*."¹⁵ Thus, two "agreed-upon requirements"

¹⁴ See, e.g., OATES, ENQUIST, & KUNSCH, *supra* note 7, at 208-09.

¹⁵ For example, in the sample memorandum excerpted in Appendix C, *infra*, one issue is whether a person named Prentice could be considered a "merchant" in his exchange with a person named West. A few "phrases that pay" emerge when reviewing the relevant rule, which defines "merchant" as someone who "deals in goods of the kind" or "holds himself out as having knowledge or skill peculiar to the goods" involved in the transaction. Someone who self-graded this sample memorandum would see the following upon bolding the "phrases that pay" and underlining the facts:

Prentice is a dealer because he is a wheat farmer who sold manufacturers not only his own wheat, but also the wheat of other farmers. He also held himself out as having knowledge relating to the goods, since he has been a wheat farmer for

are 1) phrase that pays and 2) legally significant facts. Coincidentally (this coincidence does not always occur, but it often does), these agreed-upon requirements are also “markers” that identify a good example of application of law to facts. Accordingly, to help identify strong application of law to facts, the self-grading guidelines ask the student to highlight the phrase that pays in one color and legally significant facts in another color.¹⁶

When using this method, the writer can graphically see where he or she talked about the rule language and the facts by reviewing the colors alone. If the two colors are never found close together, the writer can scrutinize the entire section to see if 1) the writer failed to apply the law to the facts, or 2) the writer applied the law to the facts, but did so ineffectively, either by using synonyms instead of the phrase-that-pays, or by completing the application in a conclusory way instead of referring to specific facts. If the two colors *do* appear close together, the writer can scrutinize those particular sentences to make sure that the intersection between law and facts is clearly explained.

When a reliable marker can be found, self-grading guidelines can also help reveal other weaknesses in legal writing. For example, many legal writers agree that the major discussion of how a rule applies to a set of facts should occur only *after* the writer has identified and appropriately explained the rule.¹⁷ Un-

thirteen years, runs a 3,000 acre farm, and stated to West that he knew more about her business than she did.

The self-grading would thus reveal that the writer had probably done a good job of applying the law to the facts, i.e., of showing the reader how the law and the facts intersect. To review the sample memo in its entirety, see HELENE S. SHAPO, MARILYN R. WALTER, & ELIZABETH FAJANS, *WRITING AND ANALYSIS IN THE LAW* 371-76 (3d ed. 1995) (used with permission).

¹⁶ The self-graded draft asks writers to highlight the “phrase that pays” (“PTP”) wherever it appears, as a check on the explanation or illustration of the rule. If the PTP is abstract, and/or its application in the case is controversial, writers should expect to highlight the PTP several times, because, in addition to introducing the PTP and applying it to the client’s facts, they need to explain how the PTP has been applied in one or more authority cases. If the PTP is concrete and/or its application in the case is not controversial, they should expect to highlight it less often because they may not be illustrating how the PTP was applied in the past. For an example of this method using bold-faced type instead of highlighting (of the PTP or “key terms” only), see OATES, ENQUIST, & KUNSCH, *supra* note 7, at 208-10.

¹⁷ See, e.g., NEUMANN, *supra* note 7, at 83-85; OATES, ENQUIST, & KUNSCH, *supra* note 7, at 165, 191-99; CALLEROS, *supra* note 7, at 211-21, and 304-09; and LINDA HOLDEMAN EDWARDS, *LEGAL WRITING: PROCESS, ANALYSIS, AND ORGANIZATION* 85-86 (1996). Note that I am speaking here of the “major discussion” of the facts. Certainly many strong legal writers might refer briefly to the client’s facts in a roadmap paragraph or other intro-

fortunately, however, many legal writers mistakenly — and almost always ineffectively — launch into a long factual discussion/application immediately after the introductory paragraph. After they discuss the facts, they articulate and explain the rule, and then they explain the facts again when they apply the rule to the facts.

Completing a self-grading exercise can help writers to realize when they have applied the rule to the facts before articulating the rule. In the exercise, the writer is asked to highlight all client facts in green and the phrase-that-pays in pink, wherever either appears. If the writer has discussed facts in too much detail too soon, he or she will find large chunks of green highlighting *before* the numerous pink highlights that indicate identification and explanation of the legal rule.¹⁸ This graphic signal lets the writer know that he or she needs to scrutinize that “chunk of green” to make sure that the application of the rule has not preceded its explanation.

Possible self-grading tasks can cover substantive, organizational, and mechanical writing problems. As has been noted above, self-grading tasks can work on a substantive level by helping the writer to find, and evaluate the effectiveness of, various analytical elements in the document. Substantive and organizational problems can be addressed simultaneously through another self-grading task. Legal writers generally agree that the first sentence of the paragraph should almost always be the “topic sentence,” and that the topic sentence should reveal the organizational structure of the document as well.¹⁹ The self-grading exercise can require writers to highlight and scrutinize the first sentence in each paragraph. The writer can then review the substance of each topic sentence as it relates to that paragraph, and then consider whether the topic sentences as a whole provide an outline of the document.²⁰ Finally, on a

ductory material.

¹⁸ The phrase “chunks of green” is rather inelegant, but I mention it here because the phrase grabs the students’ attention. I frequently note in a comment, “You have a ‘chunks of green’ problem here.” With students who are more familiar with the self-grading exercise, I sometimes include the phrase in my guideline questions, asking, “Does your draft have ‘chunks of green’ syndrome?” The self-grading guidelines, and the exercise itself, can be tailored to the idiosyncracies of the course — and the teacher.

¹⁹ See, e.g., SHAPO, WALTER, & FAJANS, *supra* note 15, at 142; RAY & RAMSFIELD, *supra* note 4, at 322.

²⁰ I have also used “topic sentence lists” — asking students to create a list containing the first sentence of each paragraph — for this purpose. JoAnne Durako of Villanova suggested highlighting topic sentences, and noted that this method can also graphically

mechanical level, self-grading can help writers who fail to include “pinpoints” — that is, citations to specific pages — when using long-form citations. When self-grading, writers can be required to review their long form citations and highlight the first page number (i.e., the page number of the first page of the case) in one color and the pinpoint page in another color. This very simple task helps writers to see what information is missing.²¹

The ideal self-grading exercise is probably a series of exercises, each designed to address the problems that most commonly occur at a particular stage of the writing process, and each focused on the problems common to that particular document. Self-grading exercises for argumentative documents such as briefs, for example, might focus more on whether the writer has exploited positions of emphasis within the document, while a self-grading exercise for an internal memorandum might focus specifically on noting whether the writer articulated each side’s best arguments. For any type of document, a “final draft” self-grading exercise could focus less on substantive concerns and more on identifying common mechanical and stylistic problems.²² Teachers can and should tailor self-grading exercises to complement their own teaching methods and to focus on the typical problems that occur in different semesters, in different drafts, and with different types of documents.

B. Memorializing Self-Grading Results

For any type of self-grading task, it is vital that the writer have an opportunity to record, or memorialize, what was found during the self-grading process.²³ Sometimes that might mean

reveal problems of sentence length and paragraph length.

²¹ I find that through highlighting self-grading tasks, I can “persuade” my students to eliminate some of my pet peeves from their drafts. For example, I ask students to highlight “affirm” or “reverse” in the conclusion section of the appellate brief, because I believe that one of those words (as opposed to “uphold” and “strike down”) should appear in an effective conclusion.

²² For example, because a “to be” verb is usually (but not always) part of a passive voice verb, writers might be asked to highlight all “to be” verbs, identify which of those verbs is part of a passive construction, and change unnecessary passive voice verbs to active voice verbs.

²³ This requirement may seem strange, but I believe that it is a necessary one. My most disappointing moment with the self-grading exercise came the first semester that I assigned it. I gave the students the exercise to complete with the second draft (of three). I required them to turn in the self-grading when they turned in the draft, because I presumed that they would not do the physical marking — the most important aspect of the exercise — unless they were required to turn it in. Naively, I also presumed that when the students found their errors, *they would fix them!* Instead, most students worked late

encouraging the writer to write a new topic sentence, or to articulate a rule or a conclusion in the margin on the spot. At other times, the writer might be asked to use a separate comment sheet to note what was found, to note what revisions might be necessary, or to note why revision is not²⁴ necessary. In addition, the writer should be required to write a "final comment" in which he or she identifies the strengths of the document and articulates plans for revision. In this way, the writer formally recognizes what he or she has learned during the self-grading process and makes sure that this knowledge is not lost or forgotten before the next due date.²⁵

III. INCORPORATING THE SELF-GRADED DRAFT INTO A WRITING COURSE

When incorporating self-grading exercises into the legal writing course, the teacher should be aware of 1) the current status of the document (i.e., first, second, or final draft), 2) the timing of the exercise, and 3) the amount of review and supervision that the teacher will be able to provide.

A self-grading exercise may be assigned at any point in the writing process; the teacher should simply tailor the self-grading tasks to the draft that the students are working on. For example, if the students are writing a first draft, the self-grading tasks should stay focused on "big ticket" items like large-scale organization and use of authority.²⁶ At a later stage in the writing process, the tasks can require the students to focus more on the small-scale concerns of effective legal analysis and sending signals to the reader. Self-grading tasks that are too sophisticated for the writer's understanding at a particular stage of the writing process sometimes fail because the writer may not un-

into the night completing the second draft before even looking at the self-grading guidelines. Naturally, at that point they were in no condition to make any changes in the document. Because my format did not provide them with an opportunity to comment on what they had learned — it asked them to highlight and mark certain elements and suggested that they revise if they were not happy with what they found — some of their learning was "lost" between the time they did the self-grading and the time they turned in the final draft. I still have not arrived at a satisfactory solution to this problem, but I now insist that students memorialize what they have found. For further discussion of timing issues, see text accompanying footnote 27, *infra*.

²⁴ See note 6 and accompanying text, *supra*.

²⁵ For an example of the types of comments students are asked to make, see Appendix B, "Micro Draft Self-Grading Guidelines," *infra*.

²⁶ For an example of a "big-ticket" self-grading exercise, see Appendix A, "Macro Draft Self-Grading Guidelines," *infra*.

derstand the elements that he or she is looking for or why the elements are important.

In addition, the teacher should keep in mind what elements he or she most wants to focus on when critiquing. If the teacher's major concern is strong legal analysis, he or she might require the writer to complete self-grading tasks that focus on analysis: for example, finding and marking the explicit rule within each section, highlighting the phrase-that-pays wherever it appears, marking rule explanations, etc. At a later stage, the teacher might want to require different self-grading tasks, such as scrutinizing citations for completeness or reviewing natural positions of emphasis.

The teacher should budget separate self-grading time into the semester. This budgeted time may be built into the pre-due date assignment time, or it may be scheduled a day or two after the due date. The important factor is making sure that the students know what work is expected of them and when it is expected.²⁷ If the self-grading is due on the same date as the draft, the tasks should be fairly simple, and the students should be warned to budget time "at the end" for self-grading. For more complex self-grading, the teacher may wish to assign a self-grading due date one or two days after the draft due date or to ask the students to complete the self-grading during class time within a day or two of completing a draft. To decide when to assign self-grading, the teacher should consider the students' ability to work independently and the availability of in-class time for the exercise.

The teacher can follow up the self-grading exercise in various ways. For example, the teacher can review the self-grading before beginning to critique. In this way, the teacher can use the self-grading to identify problems: e.g., a student may have highlighted the holdings from three different authority cases as "rules" within one point heading section without realizing that he or she should have synthesized the three holdings into one rule. This problem is distressing, but at least the teacher has learned that the student needs guidance about how to articulate a legal rule.

On a positive note, the teacher can often follow up the self-graded draft by praising students for their insight. Many students will identify problems with their drafts on the comment

²⁷ See footnote 23, *supra*, for an anecdotal discussion of the impact of timing problems.

sheet, e.g., "I *never* found any explanation of my legal rules! I have to put this in!" When this happens, the teacher can help the student with the problem, but praise the student for finding the error. Because one of my goals is to promote independence in my students, I find it gratifying to show students that they have the ability to find problems without a teacher's help.

Another method for using the self-graded draft is to have the student bring the self-graded draft to the conference, report on what he or she found while self-grading, and ask the teacher for guidance. The teacher will have received a clean copy of the paper and will have reviewed it, but will not have handed the paper back to the student. In this way the student feels some responsibility for doing a good job on the self-grading; to the extent that the student fails, however, the teacher's independent critique can fill in the gaps.²⁸

I have yet to find the perfect time to incorporate the self-graded draft into a legal writing course. Ideally, the students should write a good draft, self-grade, revise based on self-grading, and let the teacher review the revision. I fear that under this structure, however, many students would see the "revision" as the "real" draft and would conduct the self-grading exercise on an incomplete draft. For optimal effectiveness, the self-grading exercise should be conducted on a complete draft that represents the student's best work at that stage of the writing process.

IV. CHALLENGES

As noted above, the self-graded draft cannot turn bad analysis into good analysis. It can, however, point out which elements of the analysis are missing and give the student guidelines to use to improve the analysis.²⁹ The self-graded draft can be used most effectively in a legal writing course when the teacher is

²⁸ My instinct is that this follow-up method would be effective for the first of three drafts, but not for the second. For the second draft, I would be loathe to give up the opportunity for detailed teacher feedback that the student reviews *before* the conference. In any event, this follow-up method might allow some teachers to require three drafts instead of two: if the students take major responsibility for critiquing the first draft, the added draft would not add appreciably to the crushing grading burden that many writing teachers face.

²⁹ I sometimes include a section titled "You may wish to revise if . . ." after each highlighting task. This section lists problem areas that the student may have found when self-grading and gives generic suggestions for revision, frequently including citations to relevant pages in the textbook.

aware of and deals with the unique challenges the exercise presents to both teachers and students.

Just as some students resent the legal writing class itself, I find that some students resent completing the self-graded draft. I have heard complaints that self-grading is “just a coloring exercise,”³⁰ that it “doesn’t fit” a student’s particular writing assignment, or that self-grading “stifles their creativity.” I find that many of these complaints can be avoided by taking time to explain the purpose of the exercise and the reasons for its admittedly unusual requirements. Because actually completing the exercise (as opposed to pretending to complete the exercise) quiets many of the complaints, following up the exercise to ensure compliance with the guidelines is vital.

The self-graded draft is almost always effective when the writer takes the exercise seriously, whether or not the writer agrees that the exercise is valid. If the teacher/student ratio is so high that there is little opportunity for follow-up,³¹ however, many of the students who need the exercise most will simply make random highlights on the page and random notes in the margin, knowing that they will not be “caught.” These students, perhaps resentful of the legal writing course and its workload, incorrectly view self-grading as a meaningless exercise that will

³⁰ Teachers who assign a self-graded draft must consider how they plan to critique the colorful documents that students will create with the self-grading exercise. My original self-graded draft required two colors; this semester, my students must use four colors. Inevitably, some of the colors overlap (e.g., the topic sentence of a paragraph may also articulate a rule). To avoid having to interpret the meaning of blended colors, the teacher should tell the students what to do when highlighting with a second color. The second color could be used as an underline; in the alternative, students could draw boxes around some elements instead of highlighting them. It is vital, however, that students be required to mark particular words, rather than make less precise (and thus easier to “fake”) marginal notes.

Furthermore, some teachers have a hard time reviewing the vividly colored and annotated drafts that result from self-grading. I always ask for a clean copy to be handed in with the highlighted copy. I frequently find, however, that I end up ignoring the clean copy and commenting on the highlighted copy, because reviewing the highlighted version helps my critique. For example, I may note that the student has not highlighted a conclusion within several point heading sections or that the sentence highlighted as a conclusion (some students will mechanically highlight the last sentence) does not really provide a conclusion to the section. Thus, even if the teacher writes the critique on the clean copy, he or she should consult the highlighted copy for information about the student’s understanding of the required elements.

³¹ Because self-grading presents so many possibilities, it is easy to demand too much of the students and overwhelm them. Like class discussions or written critiques, the self-graded draft is often more effective when it is focused on fewer elements. When there is little opportunity for follow-up, the teacher should narrow the scope of the self-grading exercise.

tell them nothing about their writing. Thus, especially when the teacher has little time for follow-up, it is important to spend class time selling the exercise and its effectiveness so that students will be self-motivated to do a good job or, at least, to do the exercise honestly.

When I assign the self-graded draft, I take class time to explain to my students why I am asking them to do this somewhat bizarre exercise of highlighting different parts of the document. I am candid about explaining the problems of unfocused revision and lack of psychological distance. If the teacher has time, it can be very effective to have the class self-grade a page or two from a strong document and a page or two from a weak document. This technique allows the students to see how self-grading works.

Emphasizing concrete self-grading tasks over abstract ones can also help the exercise's effectiveness. The highlighting — the very task that makes the self-graded draft seem “meaningless” to some students — is the aspect of the exercise that makes it most valuable. If the student is asked to highlight something, that “something” is either there or it is missing; the student can't delude himself or herself about it. When a question is more abstract — e.g., “Is your rule at an appropriate level of abstraction so that it includes the facts of the relevant authority cases and of your client's case?” — it is easy for the student to answer “yes” without scrutinizing the text before answering. That's not to say that the more abstract questions are useless (many students learn from them) but that teachers may wish to spend more time on the concrete tasks than on the abstract tasks.

Some students claim that the self-graded draft guidelines don't fit their assignment. This complaint is usually an attempt to avoid the exercise. Most frequently, students tell me that not every section of their argument (or discussion, in a memorandum) has to have a rule. I confess that I used to agree with this point. I have come to realize, however, that every point heading section in a brief, and every heading or sub-heading section in a memorandum, should address either the applicability of a legal rule (or sub-part of a rule) or the validity of a thesis relevant to the client's case. That is, each section or sub-section must have a *focus*, whether that focus is a rule or a thesis relevant to a rule. A pair of simple examples illustrates this point.

For example, if one of the issues is whether a court should apply rule A or rule B, some students tell me that there is no

“rule” on this point and thus no “phrase that pays.” This claim is inaccurate; the writer can and should articulate a “rule” about how the court should choose which rule to apply. Does the court usually apply rule A in certain circumstances and rule B in others? Then the articulated rule could say, e.g., “Courts apply rule A when X factors exist,” and “X factors” would be the phrase that pays, because the writer should say at some point, “Because X factors do [or do not] exist, this court should [or should not] apply rule A in this case.” Thus, using the self-graded draft can help students to articulate explicit rules where before the rules had been implicit.

Even if a relevant section is not focused on the applicability of a rule, it should be focused on the validity of a thesis, and the writer should strive to identify a “phrase that pays” from the thesis. In the following hypothetical example, I have bold-faced the phrases-that-pay within a writer’s thesis about a statute’s legislative history: “The legislative history shows that **Congress knew** that the statute would **limit** some plaintiffs’ **access to the courts.**” Throughout the writer’s analysis, the reader should see language from committee reports or floor debates echoing the thesis, that Congressional leaders knew that the statute would limit some litigants’ access to the courts.

Thus, just as every paragraph in a rule-based section should be related to the applicability of that rule, every paragraph in a thesis-based section should be related to the validity and applicability of that thesis. In a thesis-based section, the writer should still use language consistently while explaining the connection between the thesis and the client’s case (or between the thesis and the rule governing the client’s case). Using language consistently helps to show the reader both how the writer arrived at the thesis and how the thesis is relevant to the client’s case. When using self-grading tasks to ensure that a “non-rule” section is focused on a thesis, a writer will often realize that the section has no articulated thesis; the writer will then have the opportunity to make the thesis explicit.³²

³² Thus, this type of self-grading exercise can best be used on the smallest analytical “unit”: that is, after the writer has identified all of the relevant rules, sub-rules, and theses, this type of self-grading can ensure that the writer has explicitly analyzed and explained how each rule or thesis relates to the client’s case. See Appendix B, *infra*, “Micro Draft Self-Grading Guidelines” Nos. 4-8 (which require the writer to identify sections and sub-sections before performing certain self-grading tasks).

Finally, some students who use the self-grading guidelines argue that the guidelines are too rigid and formulaic, allowing no room for creativity. I disagree strongly. Certain minimal elements are required in legal writing; the self-graded draft simply helps the writer make sure that these requirements are included, and included effectively. Legal writers are not "creative" when they fail to articulate a rule, use synonyms in place of key terms,³³ or use a confusing organizational structure. They *are* creative when they use vivid analogies to explain relationships between a client's facts and the applicable legal rules, or when they identify new relationships between a client's facts and existing legal rules. The self-graded draft does not inhibit this creativity. On the contrary, by helping the writer to overcome common editing weaknesses, it ensures that the reader will better understand those creative arguments.

V. CONCLUSION

The self-graded draft helps law students and other legal writers face the twin editing problems of lack of psychological distance and lack of focus. The exercise helps students and writers on two levels. First, it forces the writer to include the document's basic elements. This step gives the document a minimal completeness, which allows the teacher or editor to critique a complete document, rather than spending a draft encouraging the writer to make his or her elemental points "out loud" (i.e., in writing). Second, the self-graded draft can help more sophisticated writers improve their writing independently, without the aid of a teacher, by focusing them on specific elements and asking revision questions that are similarly focused. For these writers, a teacher's critique can be that much more sophisticated, and can allow that writer to push his or her legal analysis to the next level.

The most brilliant legal arguments do the world no good when writers keep those arguments inside their heads. The self-graded draft gives legal writers specific steps to follow that enable them to identify which elements of the argument failed to complete the journey to the printed page, and objective questions to answer to improve the elements that are on the printed

³³ LYNN B. SQUIRES, MARJORIE DICK ROMBAUER, & KATHERINE SEE KENNEDY, *LEGAL WRITING IN A NUTSHELL* 102-03 (2d ed. 1996) ("Use the same word to refer to the same thing; use different words to refer to different things"); see also WYDICK, *supra* note 10, at 66 (counseling against "elegant variation").

page. By forcing writers to acknowledge what is on the page and what is not, the self-graded draft gives legal writers the best opportunity to get their arguments across to a reader.

Appendix A
Macro Draft Self-Grading Guidelines
Office Memo

Please complete this self-grading before turning in the MACRO draft of the Memo. You should complete this exercise early enough to fix the problems that the exercise reveals, and then do the exercise again to label the main elements of the document for my review. As you do the exercise, feel free to write revisions or ideas for revision *neatly* in the margins or on a separate sheet of paper. You should also record any private memo questions you have at each stage of the exercise.

1. Highlight the first sentence of each paragraph (“topic sentence”) in yellow.

*First, check the sentences for substance, and write a topic sentence in the margin if the sentence is not substantively strong. Typical strong topic sentences in an objective document would be 1) articulations of a rule of law or 2) statements of legal conclusions you predict the court would reach. A typical weak topic sentence would be a sentence describing authority case facts.

*Second, scan through the document, noticing sentence length (do you see any topic sentences that need to be shorter?) and paragraph length (do you see any paragraphs that need to be shorter or longer?).

*Finally, read *only* the highlighted sentences to check your organization. Within each issue or sub-issue, do you see one or more topic sentences about the meaning of the rule (i.e., the explanation) followed by one or more topic sentences about how the rule should be applied to your client’s case? Or do you see sentences about each issue scattered throughout the document? This review should tell you the extent to which you need to reorganize (or organize!) the document.

2. Find each rule or sub-rule that you discuss and write “rule” or “sub-rule” in the margin.

*For these purposes, identify every rule and sub-rule that you can, even if some of them receive only minimal discussion.

3. For each rule or sub-rule that you have identified, write “explanation” in the margin next to the beginning of the explanation of that rule or sub-rule.

*For each rule or sub-rule, note whether the language at issue is abstract or concrete and whether its application in this case is controversial or non-controversial. (You may need to discuss non-controversial rules, e.g., if there’s a 3-part test, and only one

of the parts is controversial here.) The more abstract and controversial the language or rule at issue is, the more explanation you need to provide for the reader. Explanation usually consists of discussions of past cases in which the rule has been applied.

*When explaining a controversial rule, try to tell the reader about one or more authority cases in which the court has found that the rule DID apply to a particular set of facts and one or more authority cases in which the court has found that the rule DID NOT apply to a particular set of facts. This technique will make your application section easier.

4. For each rule or sub-rule that you have identified, write "app." in the margin next to the paragraph in which you begin the application part of the paradigm for that rule or sub-rule.

*When you apply a rule or sub-rule to the facts and predict whether a court would find that the rule does apply, explain your case in relation to the authority cases that you used to explain the rule, comparing facts as appropriate.

5. For each rule or sub-rule that you have identified, write "conclusion" in the margin next to the paragraph in which you have stated your conclusion as to that rule or sub-rule.

*At the end of your discussion of each rule or sub-rule, you should have explicitly articulated your conclusion about how that rule or sub-rule should apply in this case. Frequently, the language will mirror the language in your rule or sub-rule. *Don't worry about being too obvious.* Your reader will appreciate the sense of closure that you provide by saying, in essence, "now I'm done talking about this issue or sub-issue." If you have not explicitly stated a conclusion, go ahead and write one in the margin.

6. Highlight each citation in blue.

*First, review the highlighting and note how *much* authority you have. At the very least, you should cite to one authority for each rule and sub-rule (frequently, you may use the same case as authority for more than one sub-rule). Generally, the more abstract/controversial the rule is, the more explanation (and thus the more authority) you need to provide; if the rule or sub-rule is concrete and/or not controversial, you may need to cite only one case with a parenthetical. As a general guideline, you should always have citations to authority in rule paragraphs and explanation paragraphs; you *may* have an application/conclusion paragraph without a citation.

*Second, note what *type* of authority you have. In most cases, your "rule authority" (authorities cited to provide authority for a

rule) should be from the highest court in your jurisdiction. Your “illustrative authority” (authorities cited to illustrate how rules have been applied in the past) may be from lower courts within that jurisdiction. (Note that some rule authorities may also function as illustrative authorities.) Your illustrative authority may include cases from other jurisdictions *only* when the case cited is very much on point *and* the case is discussed in light of a rule from your jurisdiction.

*Third, for each citation, note how much *description* of the authority you’ve provided. For a case that illustrates an abstract, controversial rule, provide a lengthier, in-text case description (legally significant cause of action, facts, holding, reasoning), while for a case illustrating a non-controversial point, or for a secondary case illustrating a controversial point, a parenthetical description may be adequate. (You almost never need both an in-text description and a parenthetical description.) If you use a parenthetical description, make sure to focus it on the point you’re trying to make. For example, to provide authority for the argument that your client’s termination was a “wrongful discharge” because it violated public policy, the following parenthetical would NOT be adequate:

Name v. Name, 101 N.E.2d 101, 110 (Ohio 1999) (Plaintiff claimed employer had fired her in retaliation for seeking equal pay).

This parenthetical tells the reader nothing about the how the court decided the case or why the court decided the way it did. Instead, focus the parenthetical on the point at issue:

Name v. Name, 101 N.E.2d 101, 110 (Ohio 1999) (firing Plaintiff who had sought equal pay held “wrongful discharge” because existing equal pay legislation shows “identifiable public policy”).

This parenthetical gives reader a succinct picture of the cause of action (wrongful discharge), facts (fired after seeking equal pay), holding (it was wrongful), and reasoning (legislation helps show public policy). Note too, however, that if your parenthetical gets too long, you might as well include an in-text discussion.

Appendix B
Micro Draft Self-Grading Guidelines
Office Memo

Complete this self-grading in conjunction with the MICRO Draft. First, complete the marking for each element, then answer the questions below on your "COMMENT SHEET." For each numbered item, note whether you need revision. If you need to revise, note what type of revision is needed; if you don't need to revise, note how you can be sure that your message is clear. You may also wish to ask private memo questions to help you revise. As you work on the self-grading, feel free to write tentative revisions or additions on the comment sheet or on the draft itself.

1. **QUESTION PRESENTED:** In each question, draw one box around the core question, another box around the legal context, and a third box around the legally significant facts. Label each in the margin.

* Are all of the elements included? Is the core question a yes-or-no question? Does the question include the facts that are legally significant to that core question? *Have you avoided assuming an element at issue? (e.g., "when the termination violates public policy by . . .") You may wish to revise if you have answered any of these questions "no."

2. **BRIEF ANSWER:** A. Draw a box around "yes" or "no." B. Draw a box around "because," "since," "thus," or "therefore" (if they occur).

Did you answer the question directly? (It's okay to say "probably.") Did you briefly explain WHY you answered the question the way you did? (e.g., "because Mr. Diamond did not rely . . .") Note that not all correct brief answers contain "because" or a synonym, but many good ones do. You may wish to revise if you have answered any of these questions "no."

3. **STATEMENT OF FACTS:** Write "context" in the margin next to the sentence/paragraph in which you provide context for the statement (e.g., "Mr. Diamond was fired . . ." "Our client wants to know whether . . .").

Did you choose chronological or topical organization? Why? Did you avoid conclusions of law in the statement of the facts? (e.g., "Mr. Diamond did not detrimentally rely on Ms. Benson's statements.")

4. **HEADINGS WITHIN DISCUSSION SECTION:** Ideally, your headings already indicate where the discussion of each significant rule or

sub-rule begins and ends. (I.e., when the next heading appears, that new heading signals the end of the rule or sub-rule discussed under the previous heading.) Because you should perform steps 5 through 8 below on each heading within the discussion separately, review the headings within your discussion section now, and insert headings as needed so that you can identify when your discussion of each rule and sub-rule begins and ends. Note: If the discussion of a rule consists almost entirely of a discussion of sub-rules pertinent to that "major rule," you should also include headings to identify each sub-rule discussion so that you can perform items 5 through 8 on those sub-rules. Thus, "relevant headings" are headings that signal the analysis of a rule or sub-rule.

PERFORM STEPS 5 THROUGH 8 BELOW SEPARATELY WITHIN EACH RELEVANT HEADING AS NOTED IN STEP 4.

5. ARTICULATION OF RULES: A. Within each relevant heading, write "Rule" or "Sub-rule" in the margin next to the sentence/paragraph in which you articulate the rule or sub-rule. B. Within each rule or sub-rule, find each "phrase that pays," i.e., the words or phrases that are in controversy in this case (e.g., "detrimentally rely"). Highlight each phrase that pays in pink wherever it appears. Note: Some rules or sub-rules have more than one "phrase that pays," but your goal should be to limit your highlighting to as few words as possible. Doing so will help you to use self-grading to judge the effectiveness of your explanation and application sections.

Are you unable to find an explicit rule? Do you have a hard time finding a "phrase that pays"? Not every rule has a phrase that pays, but most do. If you can't find one, explain why the case turns on something other than the meaning of words or phrases within the rule. You may wish to revise if you have answered any of the above questions "yes."

6. EXPLANATION/ILLUSTRATION OF RULES: Within each relevant heading, highlight all citations in blue. Note whether each authority is "rule authority" (cited to provide authority for the existence of a rule), or "illustrative authority" (cited to illustrate how a rule has been applied in the past). Write "explanation" in the margin next to the sentences in which you explain the meaning of the rule (e.g., by illustrating how it has been applied in the past). Note that for some complex rules, the explanation may consist entirely of your discussion of sub-rules within that complex rule. You may ignore step 6 for those complex rules;

you will be marking explanatory authorities within the discussions of the sub-rules.

*Have you cited authorities that illustrate negative and positive applications of each controversial rule to set up parameters for your discussion? For authorities used to illustrate more abstract, controversial rules, have you described the authority in a way that helps the reader to see the connection between the authority case and the client's case? (E.g., by describing the legally significant cause of action, facts, holding, and reasoning?) Within explanations of abstract, controversial rules, do you see frequent pink highlights, indicating that you have explained how courts in authority cases have analyzed the phrase-that-pays? For some rule authorities, and for all authorities used to illustrate a more concrete, non-controversial rule, have you included *at least* a parenthetical description of the case focused on the aspect of the case now at issue? You may wish to revise if you have answered any questions "no."

7. APPLICATION OF LAW TO FACTS: Within each relevant heading, highlight any client facts, or any references to the client's facts, in green. Write "app." in the margin next to the sentence/paragraph in which you discuss how the governing rule applies or does not apply to the facts of the client's case, or in which you discuss alternate applications of the rule.

*You should see green and pink highlighter close together here; that is, ideally, you should have a sentence that says "Phrase that pays equals [or does not equal] client facts because . . ." Did you slow reader's understanding of the application by using synonyms for the phrase-that-pays? Do you have a big chunk of green at the beginning of your discussion of the rule? (i.e., BEFORE you've articulated the rule and/or explained the rule?) Note that most readers will not understand the significance of the client's facts if you have not yet explained the rule. You may wish to revise if you have answered any questions "yes."

8. MINI-CONCLUSIONS: Within each relevant heading, highlight the conclusion to your discussion of that rule or sub-rule in yellow. Compare your conclusion sentence(s) to the sentence(s) above in which you articulated the rule or sub-rule.

Note that some mini-conclusions will be combined with the application paragraph. Does your conclusion appear at the geographical end of your discussion of that issue or sub-issue? Does the conclusion include language from the rule or sub-rule itself (e.g., a phrase-that-pays) so that the reader can understand the

connection between the rule and the conclusion? You may wish to revise if you have answered any questions "no."

REPEAT STEPS 5-8 WITHIN EACH RELEVANT HEADING IN THE DISCUSSION SECTION AS NOTED IN STEP 4.

9. FINAL COMMENT

Review your comment sheet and write a brief final comment to yourself, identifying 1) The strongest part(s) of the memorandum, and 2) the **THREE** most important things you think you need to work on for the final draft. 3) Ask any private memo questions you have about what you found or about how to accomplish certain revisions.

Appendix C Sample Self-Grading: Micro Draft

The self-grading excerpt below is from a sample memorandum that appears in Appendix D of HELENE S. SHAPO, MARILYN R. WALTER, & ELIZABETH FAJANS, *WRITING AND ANALYSIS IN THE LAW* 373-74 (3d ed. 1995). It is used with permission. It follows the self-grading guidelines that appear in Appendix B: Micro Draft Self-Grading Guidelines, *supra*. The comment sheet is not included.

<u>Underlined</u>	= Green Highlighting (Client Facts)
<u>Words</u>	
Bolded Words	= Pink Highlighting ("Phrases that Pay" or Key Terms)
<i>Words in Italics</i>	= Blue Highlighting (Citations to Authority)
SMALL CAPS	= Yellow Highlighting (Conclusion)

- Rule The statute itself defines **merchant**, in part, as "a person who **deals in goods of the kind** or otherwise by his occupation **holds himself out as having knowledge** or skill peculiar to the practices or goods involved in the transaction." *Kan. Stat. Ann. § 2-104(1) (1983)*. One court
- Exp. in Kansas has addressed the question of whether a farmer is a **merchant** in a case involving the sale of hogs between hog farmers. *Musil v. Henrich*, 627 P.2d 367 (*Kan. App. 1981*). The court concluded that the defendant farmer in the hog transaction was a **merchant** under either definition of the statute. First, as someone who had been in the hog business for thirty years and was selling 50-100 hogs per month, he was a **dealer** in hogs. Second, he **held himself out as having knowledge** or skill relating to the goods, since he had equipment and buildings related to hog farming and sold hogs to private individuals, as well as to a slaughterhouse. *Id.* at 373. Prentice, like the hog farmer in *Musil*, is a **merchant** under either definition. Prentice is a dealer because he is a wheat farmer who sold manufacturers not only his own wheat, but also the wheat of other farmers. He also held himself out as having knowledge relating to the goods, since he had been a wheat farmer for thirteen years, runs a 3,000 acre farm, and stated to West that he knew more about her business than she did. PRENTICE IS THEREFORE A
- App. **MERCHANT, AND IT IS APPROPRIATE TO APPLY § 2-314.**
- Con.