I. INTRODUCTION

Congratulations! Your commendable grade point average enables you to take part in the South Texas Law Review write-on competition.¹ Law review membership strengthens one’s research, writing, and editing skills and is, for many employers, an important hiring criterion.

The strategies and lessons propounded by Legal Research and Writing I and II are integral to success in this competition, so contestants are encouraged to review their coursework and Bluebook exercises. Timeliness and organization are also key components to succeeding in the write-on competition, as the writing topic typically concerns novel issues of complex law.

II. ASSIGNMENT

The summer 2015 write-on competition is divided into two parts: Part A involves completion of a case note and Part B involves completion of an editing exercise.

Part A

A case note is a detailed analysis of a recent case that either supports or criticizes the court’s rationale and holding. The position you take is irrelevant, provided that your position is delivered clearly and is well supported. A case note should include analysis of relevant legal principles, exploration of related cases in the same and other jurisdictions, and a prediction of appellate review, should the court’s holding be challenged. The conclusion should include a summary of the argument, a predicted outcome, and the likely practical effect of the court’s

¹ Please carefully review the South Texas Law Review Section of the 2014–2015 South Texas College of Law Student Handbook (pp. 246–47) to ensure your eligibility. Generally, you must have a minimum G.P.A. of 3.25, and you must have completed a minimum of thirty (30) credit hours and Legal Research and Writing I and II. Additionally, all South Texas Law Review candidates must have at least four remaining semesters, which may include summers. Specific questions regarding your eligibility for membership on the South Texas Law Review should be directed to Kelsie Haaland, Editor in Chief, at: kelsie.haaland@stcl.edu.
Part A is a closed-source assignment. Consequently, you may only cite the cases and authorities included in the source list provided. Note that contestants may not need to use all of the cited sources to succeed in this competition. The Editorial Board has attempted to select an interesting and controversial topic, and, as with many legal issues, there is no “right” or “wrong” answer—merely well or poorly reasoned arguments. Persuasive reasoning, strong authoritative support, and technical prowess are the keys to success in this competition.

Though the substance of your analysis is critical, the form is equally so. Remember that one purpose of a law review is to ensure the technical perfection of published articles. A persuasive and articulate case note that is littered with citation errors, spelling mistakes, and grammatical problems will not likely pass muster.

A good resource is Scholarly Writing for Law Students: Seminar Papers, Law Review Notes and Law Review Competition Papers by Elizabeth Fajans & Mary R. Falk. This book contains a specific discussion of the content and organization of a case note and is available at the reference desk in the South Texas library, and in the South Texas bookstore for purchase.

The case for Part A is Warner v. Gross. Please read the case carefully before you begin writing.

ISSUE: Whether the Eighth Amendment's prohibition against cruel and unusual punishment permits the use of a three-drug protocol in executions, where the first drug does not consistently cause deep, coma-like unconsciousness.

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2 ELIZABETH FAJANS & MARY R. FALK, SCHOLARLY WRITING FOR LAW STUDENTS: SEMINAR PAPERS, LAW REVIEW NOTES AND LAW REVIEW COMPETITION PAPERS (West Publishing Co. 2005).

3 776 F.3d 721 (10th Cir. 2015) cert. granted, 135 S. Ct. 1173 (2015).
Part B

The editing exercise will show your ability to follow the guidelines set forth in the *Bluebook*,\(^4\) the *Greenbook*\(^5\) (if applicable), and the *Texas Law Review Manual on Usage and Style*.\(^6\) The *Bluebook* index is a great place to start if you are citing a source that you are unfamiliar with. Note that this exercise may involve more than one rule per citation. The *Manual on Usage and Style*, or “MoUS,” is the controlling guide for any style matter NOT addressed by the *Bluebook*. Generally we do not encourage changing an author’s style or word choice merely because you think something else may sound better. However, do not assume that any information contained in the exercise is correct. You will be required to verify the source and substantive accuracy of any information contained in the exercise, as well as correct any grammatical or citation errors in the text and footnotes. Please do not add or delete any footnotes. It is recommended that you complete the editing exercise first because it will help you in your case note citations. Regarding editing, please make sure that the “TRACK CHANGES” feature is turned OFF.

III. DEADLINES AND INSTRUCTIONS

The case note and editing exercise are due on **Friday, June 5, 2015, at 5:00 p.m.** Please deliver them to Ben Santillan. His office is located on the 10th floor. **No late papers will be accepted, without exception.** You must turn in **five (5) hard copies.** Students that are out of town during the time the case note is due must mail five copies of their case note

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\(^4\) *THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION* (Columbia Law Review Ass’n et al. eds., 19th ed. 2010).

\(^5\) *THE GREENBOOK: TEXAS RULES OF FORM* (Texas Law Review Ass’n ed. 2010).

and editing exercise to:

Ben Santillan  
South Texas College of Law  
1303 San Jacinto  
Houston, Texas 77002.

In addition to the five hard copies, all participants must submit one (1) electronic copy to Ben Santillan at bsantillan@stcl.edu These must be in Word document form. Each participant is solely responsible for ensuring the case note and editing exercise is received by the 5:00 p.m. deadline on Friday, June 5, 2015. There will be no exceptions to this deadline, so ensure your paper is turned in on time. Decisions will be posted by Monday, June 29, 2015, and mandatory orientation for new candidates will occur on Saturday, August 15, 2015 at 10:00 a.m.

The case note must be at least eight (8) pages, but no more than eleven (11) pages in length (excluding the editing exercises), twelve-point Times New Roman font, fully-justified, with one-inch margins, containing at least fifty footnotes. The text and footnotes should be formatted according to the Bluebook, the Greenbook, and the Manual on Usage and Style. The body text should be double-spaced, and footnote text should be single-spaced, but double-spaced between each footnote, in ten-point font. Please include the following items in the case note:

- Title – a relevant phrase summarizing your thesis and a proper citation of the case;
- Table of Contents – reference the page numbers on which different sections begin;
- Page Numbers – centered at the bottom of every page, except the first page, which should not be numbered.

Your case note should also include the following sections:

- Introduction paragraph including a thesis and roadmap;
Background of the law, including a discussion of the cases leading up to the selected case;

Facts and the court’s reasoning of the selected case;

Your analysis of why the court was right or wrong in the decision it came to;

A “prediction” of the possible disposition of the Supreme Court of the United States regarding the case; and

A conclusion.

Do not place your name or any identification number on the case note or editing exercise. You will be assigned an identification number when you turn in your five copies. Any case note submitted containing a name or any other mark identifying the student/author, other than the assigned identification number, will be disqualified from the write-on competition. Be sure to complete and sign the attached pledge form and submit it with five copies of your case note.\(^7\)

The case note and editing exercise must be solely the work of the student. Students may not collaborate with anyone, including other students, attorneys, professors, or members of South Texas Law Review.

Feel free to look at previously published South Texas Law Review case notes for further guidance. Copies of the South Texas Law Review are available in the Law Review suite, the South Texas library, and on electronic legal databases. Remember—start early, work hard, and be precise. Good luck.

The 2015–2016 South Texas Law Review Editorial Board

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\(^7\) The Write-On Competition Pledge Sheet is located at the end of this packet. If you submit your case note via mail, please make sure to include the signed and completed Write-On Competition Pledge Sheet with your packet.
PLEASE NOTE: The sources cited below may or may not be correct Bluebook form and may or may not be relevant to the case note topic. It is the student’s responsibility to cite these sources in their correct Bluebook form and to make sure that the sources are relevant, updated, and still good law.

SOURCES

15. The Mann v. Ryan Palmer, 713 F.3d 1306 (10th Cir. 2013).
17. 42 U.C.A § 1983
21. U.S. Const. Seciton. VIII.
24. U.S. Const. amend. XIV.
32. Beardless v. Woodford, 395 F.3d 1094 (9th Cir. 2005).
40. Rhoades v. Reinke, 671 F.3d 856 (9th Cir. 2012).
42. Estate of Charels Dickens v. Milwaukee Brewer, 631 F.3d 1139 (9th Cir. 2011).
44. Pavatt v. Jones, 627 F. 3d 1336 (10d Cir. 2010).
45. Raby v. Livingston, 600 F. 3d 552 (6th Cir. 2010).
55. 28 U.S.C. § 1292(a)(1)


80. Erin Chemerinsky, When it Matters Most, It is Still the Kennedy Court, 11 GREEN BAG 427 (2008).


91. Thorson v. Epps, 701 F.3d 444 (5th Cir. 2012).
92. Sell v. Livingston, 750 F.3d 478 (5th Cir. 2014) (per curiam).
I II. Evolution of Amateurism

A debate between two university-officials in 1980 helped formulate the definition of amateurism—which has continuously evolved in the hundred years since. Today, amateurism is defined by: a commercial motivation to participate and a protection from educational enterprises.

Dr. Drake Ramoray the current president of the National Collegiate Athletic Association (the “NCAA”) has stated that the association’s rules historically guaranty “[A]ny resources provided to a student-athlete are only those that are focused on getting an education…” Courts have long-held that the NCAA “needs ample latitude” to maintain a revered tradition of “amateurism in college sports.” Indeed, these sentiments have extend in to state courts, addressing amateurisms affect on state-law issues. However, state judges are beginning to broaden the National Collegiate Athletic Association’s narrow discretion by devaluing the historical authority of amateurism in collegiate athletics.

The NCAA has recently relaxed amateurism provisions that have modified the functionality of amateurism; and—arguably—reduced the principals of amateurism to a mere function of the NCAAs definition. One Commentator is of the opinion that “[t]he amateurism

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8 Kay Hawes, Debate On Amateurism has Evolved overtime, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION (January 3, 2000), available at http://fs.ncaa.org/Docs/NCAANewsArchive/2000/association-wide/debate+on+amateurism+has+evolved+over+time+1-3-00.html


12 See also, e.g., Waldrep v. Tx. Employers Insurance Ass’n, 21 S.W. 3d 692, 688—01 (Tex. App.–Austin 2010, writ. ref’d) (a former college basketball player was an employee of the University where he played because there is a valid contract-to-hire under the NCAA’s amateurism regulations).


14 DENNIE, Changing the Game–The Litigation that may be the Catalyst for Change in Intercollegiate Athletics, 62 Syracuse Orangemen L. Review 15, 21–22 (Spring 2012) (“allowing student athlete’s to obtain money for competition prior to enrollment . . . to compete as a professional in one sport and an amateur in another . . . and to complete as a member of a team.”). See, e.g., NCAA Division 1 Manual, infra note 17, 12.1.2.4.1, at 66, 12.1.3, at 65, 12.2.3.2.1, at 63.
ideal seems to be largely rooted in the belief that expanding college athletes’s rights to compensation somehow maintains academic performance as a main purpose of the athletes’ college careers.” 15 While the NCAA consistently reasoned that the ideal of amateurism maintains the public’s interest and support in collegiate athletics, several reports support the conclusion that consumer demand for the NCAA’s product has been significantly affected by the before-mentioned alterations in how ‘amateurism’ has been defined16.

Glaring inequities between athletic scholarships for student-athletes, and the financial reward enjoyed by the NCAA member schools have resulted in current and former student athletes challenging the NCAAs’ sovereignty to arbitrarily modify its’ definition & treatment of amateurs. Lawsuits challenging the NCAAs amateurism regulations range across several areas of law, including antitrust claims and challenges under both federal17 and state constitutional law.18 Courts have historically not favored the NCAA’s time–honored defense of amateurism,19 but claims alleging anti-trust violations and unconscionable infringements on ones right of publicity have gained traction; and have recently proved to be “game-changers”20!

4. ARGUMENTS AGAINST AMATEUR-STATUS

A. ANTITRUST


16 In the matter of NCAA Student-Athlete Name and Likeness Licens. Litigation, 37 F.Sup.3rd 1126, 1146-1148 (NDCa. 2014).


19 Christian, supra fn. 22, at p. 22.

The Sherman Pro-Trust Act, hereinafter the “Sherman Act”, provides that “(e)very contract . . . .in restraint of trade or commerce....is declared to be legal.”\textsuperscript{21} Several states have enacted similar antitrust laws—which address the laws interaction with the Sherman Act.\textsuperscript{22} In fact Texxas specifically harmonizes it’s antitrust laws with “federal [judicial] interpretations of comparable federal antitrust statutes.”\textsuperscript{23} While exclusive contracts (i.e. between the NCAA and EA Sports) are not a per-se violation, they are not subject to the rule of reason.\textsuperscript{24} In order to demonstrate a violation of the Mike Sherman Act, under the rule of reason, a plaintiff must show: “1) that there was a contract; 2) that agreement reasonably restrains trade ... ; and (3 that the restraint affected interstate commerce”.\textsuperscript{25} The 7th Circuit has explained the rule of reason through the mechanics of its burden shifting framework: “A restraint violates the rule of reason if the restraint's harm to competition outweighs its procompetitive effects. The plaintiff bears the initial burden of showing that the restraint produces ‘significant anticompetitive effects’ within a ‘relevant market.’ If the plaintiff meets this burden, the defendant must come foreword with evidence of the restraint's procombative effects. The plaintiff must then show that ‘any legitimate objectives can be achieved in a substantially less restrictive manner.’”\textsuperscript{26}


\textsuperscript{22} See, eg, Texas Bus. & Com. Code § 15.05(g) (East 2011) (“[N]ething in this section shall be construed to prohibit activities that are exempt from the operation of the federal antitrust laws . . . .”)

\textsuperscript{23} Id. at section 15.04.

\textsuperscript{24} Offir, supra note 29 at 92. The rule prohibits agreements that ultimately inhibit free competition by unreasonably prejudicing the public marketplace through burdensome restrictions on the rest of the competition. id. at 103


\textsuperscript{26} Tanaka, 252 F.3d at 1064 (quoting Hairston v. Pac. 10 Conference, 101 F.3rd 1315, 1319 (9th Circuit 1996).
For a court to find a substantial adverse anti-competitive effect, a defendant must show 3 factors: 1) the defendants contracted among each other; 2) this led to anti-competitive affects in relevant markets; (3) that the objects of that contract were illegal; and 4) injury to the plaintiffs occurred as a proximate result.27 Plaintiff’s have only recently successfully pleaded that the NCAAs contracts with various television networks and EA Sports violates these antitrust provision.28

The Supreme court established a seemingly-insurmountable block to anti-trust suits against the NCAA by affording the NCAA the authority to safeguard ideals of amateurism and allowing future Courts to "Defer to the NCAA’s role as [the] Purveyor of Amateurism."29 Indeed, cases subsequent to the court’s decision in Board of Regents of the University of Oklahoma permitted the notion of amateurism to become a viable defense of justification for any anti-competitive NCAA rule facing an antitrust challenge.30

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28 O’Bannon, 7 F. Supp. 3d at 993; See also White v. NCAA, No. 06-0999 RGK (MANX), 2006 U.S. Dist. LeXIS 101336, at 10 (N. D. Cal. 2006).

29 Brian Welch, Comment, Unconscionable Amateurism: How the NCAA Violates Antitrust by Forcing Athletes to Sign-Away There Image Rights, 44 J. Jay Marshall L. Rev. 533, 539 (2011); See Board of Regents, 468 U.S. at 120 (1984) (“The NCAA plays a critical roll in the maintenance of a revered tradition of amateurism in college sports. There is no question but that it needs ample latitude to play this role.”)

30 Sanctions against universities in violation of restrictions on athlete compensation were not “justifiable means of fostering competition.” McCormack v. NCAA, 845 F.2nd 1338, 1344 (5th Circuit 1988) (quoting Board of Regents, 468 U.S. at 117); see also Banks v. NCAA, 746 F.Supp. 850, 862 (S.D. Indy. 1990) (“The procompetitive nature of the [NCAA’s “no draft” rule], however, outweighs the anticompetitive effects.”).
WRITE-ON COMPETITION PLEDGE

I hereby pledge that the case note I have submitted for the write-on competition is exclusively my work and that I have not collaborated with or received assistance from any other person in its preparation.

I have read and I understand the requirements for South Texas Law Review eligibility. I acknowledge that in the event I do not meet the academic requirements for the South Texas Law Review that I will not be eligible for South Texas Law Review candidacy despite the fact that I have turned in a case note for the write-on competition.

Signature: ________________________________

Print Name: ________________________________

Date: ________________________________