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## Teaching Public Policy Drafting in Law School: One Professor's Approach

Lisa A. Rich

*Texas A&M University School of Law*, [larich@law.tamu.edu](mailto:larich@law.tamu.edu)

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# Teaching Public Policy Drafting in Law School: One Professor's Approach

Lisa A. Rich\*

## ABSTRACT

*This article provides an overview of the Drafting for Public Policy course offered at the Texas A&M University School of Law. The article addresses the theoretical and pedagogical underpinnings of the course, including how such a course easily encompasses the teaching of cultural context and awareness, as well as professional identity, and encourages students to engage deeply in the policy-making process. It also explores the continued relevance of the work of Harold D. Lasswell, as well as that of Myres McDougal and Anthony Kronman. These works, from 1943 and 1993 respectively, resonate now because they called on law schools to engage students in practical application and ensure they developed a sound professional identity with an emphasis on commitment to the public good—two calls the legal academy hears loudly today. The article also provides a sample syllabus, ideas for assignments, and discussions of elements of the textbook used in the course to provide readers guidance in developing their own courses.*

I. INTRODUCTION .....	152
II. SOME FUNDAMENTAL UNDERPINNINGS OF THE COURSE ....	153
III. STRUCTURE OF THE COURSE .....	160
A. <i>Moving from Familiar to Unfamiliar: A Survey of Public Policy Documents</i> .....	165
1. <i>The Course and the Book</i> .....	166

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\* Lisa A. Rich is the Director of the Texas A&M University School of Law's Residency Externship Program in Public Policy. Prior to joining the faculty of Texas A&M she was the Director of Legislative and Public Affairs for the United States Sentencing Commission. She would like to thank Dean Andrew Morriss for his support for the creation of the Residency Externship Program and its requirement that students take Drafting for Public Policy; the ALWD Teaching Grants Committee for the generous teaching grant that assisted with the development of the course; and Avery L. Ory, her indispensable research assistant. Finally, she would like to thank Judge Ricardo H. Hinojosa for his professional guidance and mentorship—he is the embodiment of the lawyer-statesman.

2. <i>The Timing of the Assignments</i> .....	175
3. <i>The Assignments</i> .....	176
IV. CONCLUSION .....	179
APPENDIX A .....	181

## I. INTRODUCTION

The Drafting for Public Policy course at Texas A&M School of Law—and, indeed, all of the thoughtful courses and programs discussed at the Fifth Colonial Frontier Symposium—is designed to stand in stark contrast to Harold D. Lasswell and Myres McDougal’s 1943 lament about the state of legal education:

Any relation between the factual problems that incidentally creep into particular [law school] fields or courses, in a curriculum so “organized,” and the important problems of contemporary society is purely coincidental; and all attempts to relate such fields or courses to each other are frustrated by the lack of clear social goals and inadequate criteria of importance.<sup>1</sup>

The course is purposefully designed to (1) integrate other course doctrine and skills into its structure; (2) address current real world issues facing policymakers, stakeholders, and lawyers; (3) instill broader depth of skill and judgment in students that, hopefully, will make them productive policymakers and advocates; and (4) provide students participating in the Residency Externship Program in Public Policy<sup>2</sup> exposure to various forms of policy drafting that they may not have otherwise experienced during their law school education. In short, the course (and the larger public policy program) seeks to find the “lost lawyer” Anthony Kronman discussed in 1993<sup>3</sup> and to bring back some of the lawyer-statesperson ideal with a good dose of current professional identity pedagogy.<sup>4</sup> The course exposes students to the types of documents

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1. Harold D. Lasswell & Myres S. McDougal, *Legal Education & Public Policy*, 52 YALE L.J. 203, 204 (1943).

2. The Texas A&M University School of Law Residency Externship Program in Public Policy is a capstone program that places students in public policy-related externships in Washington, D.C. and Austin, Texas. Students are required to take the Drafting for Public Policy course as well as Administrative Law or a similar regulatory-based course prior to being placed by the Program.

3. ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 1 (1993).

4. See, e.g., WILLIAM SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF THE LAW*, THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF

that are used throughout the policymaking process beyond statutes and regulations. It is designed to emphasize the importance of analytics, strategy, good communication, and messaging across multiple platforms, and encourages the concepts of team building and coalitions.

This article provides some of the underpinnings of the course as well as discussion about its structure and goals. Part II of the article discusses the impact that Lasswell and McDougal, Kronman, and the recent work on developing professional identity and experiential learning in law school had on the formation of the course. Part III addresses the format of the course, the theoretical and pedagogical reasons behind the progression of the assignments, and how the course can be adapted to incorporate not just “real-time” events, but also cultural awareness, cultural context, and professional identity. A sample syllabus and suggested course assignments are included in an appendix to this article. The article concludes with the observation that the course, coupled with other curricular changes at the law school, have at least anecdotally helped center students and bring more dimension to the study and practice of law and policy by emphasizing cultural awareness and context, professional identity, and the civic-mindedness of the lawyer as statesperson.

## II. SOME FUNDAMENTAL UNDERPINNINGS OF THE COURSE

As this course began to take form, I wanted to go back through the history of legal education development and see what sort of “roots” I could find with respect to lawyers as policymakers. My formative experiences in law school and professional life did not distinguish between “law and morality”<sup>5</sup>; for me, a good lawyer was a moral one, and a policymaker could only craft “good” policy, in the normative sense, if he or she came from a “good” place. Lasswell and McDougal’s 1943 *Yale Law Journal* article resonated

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TEACHING 128 (2007) [hereinafter 2007 CARNEGIE REPORT] (suggesting that law schools should “deepen their knowledge of how the apprenticeship of professionalism and purpose works”); Neil W. Hamilton, *Assessing Professionalism: Measuring Progress in the Formation of an Ethical Professional Identity*, 5 U. ST. THOMAS L. REV. 470, 476 (2008) (exploring the development of the professional identity concept and its application in the law school setting).

5. See Winston P. Nagan, *Lasswell, McDougal, and Contemporary Theories of Justice*, SOC’Y FOR THE POLICY SCIS., YALE LAW SCH. 2–3 (Oct. 16, 2010) (discussing McDougal and Lasswell’s writings and the “jurisprudential crisis . . . concerning the extent to which law should be distinct from morality” that continued after World War II), <http://www.worldacademy.org/files/Yale%20Presentation%20-%20Lasswell%20and%20McDougal%20and%20Contemporary%20Theories%20of%20Justice%20-%202010.09.14.pdf>.

with me because in it they articulated an approach to legal education that embodied my own view of teaching: “[I]f legal education in the contemporary world is adequately to serve the needs of a free and productive commonwealth, it must be conscious, efficient, and systematic *training for policy-making*.”<sup>6</sup> The authors also observed, as I have in my own career, that “[a recurrent] problem for all who are interested in implementing policy, the reform of legal education must become ever more urgent in a revolutionary world of cumulative crises and increasing violence.”<sup>7</sup>

The above quote seems to be as applicable today as when it was written—in 1943. The world is replete with crises and violence, and lawyers remain at the forefront of policymaking, policy implementation, and policy interpretation. At the same time, the legal market continues to demand “practice ready,” savvy law school graduates.<sup>8</sup> These constraints make the idea of a lawyer-statesperson—someone who thinks deeply and wisely about a problem and acts, as counselor and advisor—seem almost unattainable.

This can be particularly troubling in the area of public policy given that “[a] disproportionate number of America’s political leaders have always come from the legal profession.”<sup>9</sup> In his 1993 book, *The Lost Lawyer*, Anthony Kronman theorized that “[i]f lawyers are especially well equipped to play a leading role in politics, . . . [i]t is because their training and experience promote the deliberative virtues of the lawyer-statesman ideal” that is paramount to effective policymaking.<sup>10</sup>

Today’s world seems to be more about market efficiencies, optimal use of technology, and rapid outcome—even in the deliberative world of public policy.<sup>11</sup> But does the state of affairs today

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6. Lasswell & McDougal, *supra* note 1, at 206.

7. *Id.* at 203.

8. See Lexis Nexis, HIRING PARTNERS REVEAL NEW ATTORNEY READINESS FOR REAL WORLD PRACTICE 1–2 (2015) (reporting that “95% of hiring partners and associates in a recent survey believe[d] recently graduated law students lack key practical skills at the time of hiring” and law schools must do more to ensure “practice-ready” students).

9. KRONMAN, *supra* note 3, at 3–4.

10. *Id.* at 4.

11. See, e.g., Kurt Orzeck, *New Technology Transforms Law Firms’ Bottom Lines*, LAW360 (Apr. 24, 2016), <https://www.law360.com/articles/435340/new-technology-transforms-law-firms-bottom-lines> (noting that law firms are moving towards “new software and more powerful electronic devices” and “are looking to replace employees, streamline workflow and mine their extensive case libraries for valuable data”); Eli Stokols, *Trump’s Twitter addiction could reshape the presidency*, POLITICO (Nov. 29, 2016), <http://www.politico.com/story/2016/11/donald-trump-twitter-231959> (explaining that President Trump’s use of Twitter to convey his position on issues could have a tremendous impact on policy and government).

mean that there is no more room for the lawyer-statesperson? Does it mean that law school curricula have become so weighted in the technical that there is no room for deliberative virtues in the classroom? Kronman certainly worried that, in 1993, we had reached the precipice. But I believe strongly that, as the American Bar Association (ABA) and others, such as Neil Hamilton,<sup>12</sup> encourage law schools to do more to ground students in professional identity, and address social and civic issues squarely, there may indeed be room for a course (or courses) that can bridge all approaches. I submit that courses such as this one and the many discussed at the symposium do in fact bridge the gap and go far toward training lawyer-statespeople.<sup>13</sup>

In his scholarship on the “lost lawyer,” Kronman was profoundly concerned that, without a change in the way law schools and professors trained lawyers, those men and women who were destined to become the country’s political leaders “[would] be less qualified . . . than before” because they would “be less likely to possess the traits of character—the prudence or practical wisdom—that made [lawyers] good leaders in the past.”<sup>14</sup> Kronman presents what he freely admits is a somewhat idealized version of the lawyer-statesman, particularly as manifested in the late nineteenth century.<sup>15</sup> In this “perfect world” the lawyer-statesperson is one who “cares about the public good and is prepared to sacrifice his own well-being for it, unlike those who use the law merely to advance their private ends.”<sup>16</sup>

One way this course, and others like it, may be reviving the idea of the lawyer-statesperson is that it emphasizes the role of the public sector lawyer as a “counselor in matters of state” with the important task of “offer[ing] advice about ends.”<sup>17</sup> Each exercise, reading, and class discussion requires students to ask the fundamental question, “why now?,” in the context of the stakeholder/client’s articulated mission and the dual goals of promoting the formation of good policy and the prevention of bad policy. The

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12. Hamilton, *supra* note 4.

13. See generally 2007 CARNEGIE REPORT, *supra* note 4, at 87–125 (discussing the “bridges to practice” from thinking like a lawyer to lawyering). In this chapter the report also explains the need not just for elective courses like the one discussed here, but for an integrated curriculum that “would also make legal education more like preparation in a number of other professions.” *Id.* at 88. Although not the subject of this article, this notion of a fully integrated curriculum provides the foundation for the Residency Externship Program in Public Policy, of which this course is a part.

14. KRONMAN, *supra* note 3, at 4.

15. *Id.* at 14.

16. *Id.*

17. *Id.* at 15.

subtext of the course is that as lawyers crafting public policy, we should aim to be paragons of judgment, people who others look to “for leadership on account of [our] extraordinary deliberative power.”<sup>18</sup>

Another aspect of the course that reflects some of Kronman’s lawyer-statesperson ideal is the emphasis on coalition-building strategies and viewing issues from multiple perspectives. Of course, this can make students as nervous as implementing the more traditional case-based method of law school learning: By stressing coalition techniques and multiple sides to an issue, students may be left thinking that every position is respectable, therefore, what is the point of having personal thought or integrity?<sup>19</sup> The intent of the course, however, is to incorporate the concepts of judgment and wisdom, and to instill a sense of prudence over selfishness, which is only caring about the client’s stated ends. In other words, the course seeks to have students not resolve an issue “by always putting the client’s well-being before the law’s” but to explore ways in which the client’s mission and ends can be achieved while also ensuring good policy and leadership.<sup>20</sup> Of course, pursuing the client’s ends may be the only path a lawyer can take, but knowing the alternatives and recognizing the outcomes of different choices throughout the policymaking process places the client, and her advisor, in a better position.

This leads to another point of the course that is consistent with Kronman’s lawyer-statesperson ideal: recognizing the difference between advocacy and counsel. Today it seems as if the public lawyer dwells solely in the world of advocacy. In other words, these lawyers show little to no “ambivalence or uncertainty about the client’s position” which would be apparent in our role as counselors.<sup>21</sup> Every policy and decision, are polarized, and *compromise* and *consideration* seem to be words left unspoken.<sup>22</sup> The mix of assignments in this course, however, takes a student through the

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18. *Id.*

19. *See id.* at 114–15.

20. *Id.* at 145.

21. *Id.* at 146.

22. *See, e.g.,* Richard L. Hasen, *End of the Dialogue? Political Polarization, the Supreme Court, and Congress*, 86 S. CAL. L. REV. 205, 209 (2013) (noting that continued political polarization, particularly in Congress, has altered the dynamic between the Supreme Court and Congress on issues such as statutory interpretation and that the resulting power shift effects in the long term remain uncertain); *Partisanship & Political Animosity in 2016: Highly negative views of the opposing party—and its members*, PEW RESEARCH CTR. (June 22, 2016), <http://www.people-press.org/2016/06/22/partisanship-and-political-animosity-in-2016/> (noting that for the first time since 1992 its survey found that “majorities in both [major U.S. political] parties express not just unfavorable but very unfavorable views of the other party,” including its proposals).

worlds of advocacy and counselor. For instance, students act as counselors when preparing briefing memoranda and hearing summaries in which they make careful observations, suggest strategies, and pose questions to gain further information. They act as advocates when preparing position papers, hearing testimony, and commenting on rulemaking. In so doing, the course emphasizes that lawyers involved in policy wear different hats and bring a multitude of skills to a task at hand.

Finally, Kronman criticized the case method of learning because it “robs [students] of [their] faith in large ideas, and . . . puts in place . . . a form of skepticism.”<sup>23</sup> Reliance on the case method perhaps could explain why some students may experience in this course (and, to some degree, in courses of a similar nature) an initial feeling of discomfort—the whole course really is about big ideas and big strategies. These concepts are untethered to typical case analysis, but if students step back from the precipice they eventually see that all the analysis and attention to picayune details they have showered on the study of case law can serve them extraordinarily well in public policy drafting. They can thrive if they let themselves because their brains have become hardwired to see patterns, make connections, and process information quickly.

In *Roadmap*,<sup>24</sup> Neil Hamilton asks his readers (on the very first page of the book) to consider two “easy” questions: “[Can you] [t]ell me about a project that you managed and what you learned from that experience[?] [Can you] [t]ell me specifically about how you handled a difficult team member in implementing the project[?]”<sup>25</sup> He then notes that many, if not most, students in law school may think about the typical group assignment in which someone always is the “weakest link” but, beyond that, may struggle with an answer.<sup>26</sup> Hamilton then asks, what if the questions get trickier? What if you are asked “[w]hat value do you bring beyond just technical legal skills to help our clients be successful?”<sup>27</sup>

The questions raise two important aspects of the Drafting for Public Policy course and how it is structured. The first is its emphasis on policy as coalition and compromise; its exercises and discussions are designed to encourage teamwork and coalition

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23. KRONMAN, *supra* note 3, at 159.

24. NEIL W. HAMILTON, *ROADMAP: THE LAW STUDENT'S GUIDE TO PREPARING AND IMPLEMENTING A SUCCESSFUL PLAN FOR MEANINGFUL EMPLOYMENT 1* (2015).

25. *Id.*

26. *Id.*

27. *Id.*



building, to raise students' awareness of the power of both majority and minority stakeholders in the legislature, and to enforce the importance of character and judgment to one's success in the public sector. The second is the course's emphasis on developing a student's professional identity in the public policy context. How do you want to be perceived? How do you want to garner your successes?

At a 2007 Vanderbilt Law School symposium, scholars proposed ways in which the legal education system could amend curricula to "expand students' understanding of what law is, to move beyond adjudication and the courtroom, to introduce broader forms of knowledge, and to develop a wider range of skills."<sup>28</sup> But as scholars noted, the typical law school experience is a "journey of collective learning" in which we encourage students to "get [ ] it"—good grades, good reviews, good opinions of a student's "getting it"<sup>29</sup> which results in a highly competitive, individual-focused culture.<sup>30</sup> In the decade that has passed since the Vanderbilt symposium, law schools and the ABA have made a great effort to change this "culture" of individualism, but we have far to go. Observations made in 1943 and 2007 still very much remain alive today—"[t]he template for legal thinking established in the first year of law school has real staying power."<sup>31</sup> As such, in innovative courses such as the ones discussed at the Fifth Colonial Frontier Symposium, law school professors are encouraging flexible thinking beyond first-year rigidity and providing "real world" examples of doctrine in practice.<sup>32</sup>

Although a 2015 *Governing* magazine article suggested the diminishing presence of lawyers within government,<sup>33</sup> there is no

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28. Susan Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a Culture of Competition & Conformity*, 60 VAND. L. REV. 515, 517 (2007).

29. *Id.* at 521–23.

30. *Id.* at 523.

31. Todd D. Rakoff & Martha Minow, *A Case for Another Case Method*, 60 VAND L. REV. 597, 607 (2007).

32. See, e.g., Jamie Abrams, *Experiential Learning and Assessment in the Era of Donald Trump*, 55 DUQ. L. REV. 75 (2017) (discussing pedagogical advancements in law school curricula in a politically charged environment); J. Lyn Entrikin & Richard K. Neumann Jr., *Teaching the Art and Craft of Drafting Public Law: Statutes, Rules, and More*, 55 DUQ. L. REV. 9, 17 (2017) (noting that while legislative and regulatory courses in law school curricula remain "sparse," these courses and other "innovative teaching materials promote[ ] improvement in law school curricula and legal education generally"); Rex D. Frazier, *Capital Lawyering & Legislative Clinic*, 55 DUQ. L. REV. 191 (2017) (describing the development of McGeorge's Capital Lawyering & Legislative Clinic from its innovative course beginnings and the need for law students to understand the importance of legislative advocacy).

33. See Alan Ehrenhalt, *Why It's Important to Know Lawmakers' Day Jobs*, GOVERNING (Oct. 2015), <http://www.governing.com/columns/assessments/gov-state-legislator-professionals.html> (noting that the number of lawyer-legislators has declined since the 1960s in

shortage of lawyers in the federal government or the state government of Texas. During the 84th Legislative Session in Texas, for example, 57 of 179 (31.8%) total filled seats belonged to lawyers.<sup>34</sup> In the United States Congress, lawyers occupy 202 of the 535 total seats.<sup>35</sup> Of that number, 51 senators (thus over half) are lawyers and 151 representatives are lawyers.<sup>36</sup> Lawyers also occupy positions throughout local, municipal, and other quasi-governmental entities.<sup>37</sup>

Thus, it is extraordinarily unlikely that a lawyer will not, at some point in his or her career, be engaged in some aspect of public policy. Recognizing this, it would seem an important mission (if only in the most normative sense) of a law school to cultivate a law student's professional identity and cultural competency<sup>38</sup> to

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many states); see also Jen Fifield, *State Legislatures Have Fewer Farmers, Lawyers; But Higher Education Level*, PEW CHARITABLE TRUSTS: STATELINE (Dec. 10, 2015), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/12/10/state-legislatures-have-fewer-farmers-lawyers-but-higher-education-level> (explaining that “[t]he percentage of lawyers serving in statehouses dropped from 22.3 percent in 1976 to 14.4 percent [in 2015]”).

34. These statistics are based on a review of the Texas House and Senate conducted by the Texas State Historical Association. See Tex. State Historical Ass'n, *State Senate—84th Legislature*, TEXAS ALMANAC (2016), <http://texasalmanac.com/topics/government/texas-senate> (listing 11 attorneys in the Texas Senate); Tex. State Historical Ass'n, *Texas House of Representatives*, TEXAS ALMANAC (2016) <http://texasalmanac.com/topics/government/texas-house-representatives> (listing 46 attorneys in the Texas House of Representatives).

35. JENNIFER E. MANNING, MEMBERSHIP OF THE 114TH CONGRESS: A PROFILE, CONG. RESEARCH SERV. 3 (2016).

36. See *id.*

37. A 2016 bulletin from the National Association for Law Placement indicated that “[t]he number of government jobs taken by law school graduates has been remarkably steady over the long arc of time.” James G. Leipold & Judith N. Collins, *The Stories Behind the Numbers: Jobs for New Grads Over More Than Two Decades*, NALP BULLETIN (Dec. 2016), <http://www.nalp.org/1216research?s=public%20sector>. The bulletin notes, for example, that the graduating law class of 1994 took 3,529 positions in government and the 2015 graduating class took 4,117. *Id.*

38. Cultural competency has a variety of definitions within professions. In 2011, the American Bar Association's Section on Labor and Employment Law accepted this definition within the legal profession:

The ability to engage in actions or create conditions that maximize (sic) the optimal development of the client and client systems. [It] is achieved by the counselors acquisition of awareness, knowledge, and skills needed to function effectively in a pluralistic society (ability to communicate, interact, negotiate, and intervene on behalf of clients from diverse backgrounds) and on an organization/societal level, advocating effectively to develop new theories, practices, policies, and organization structures that are more responsive to all groups.

Blanca Banuelos et al., *Embracing Diversity and Being Culturally Competent is No Longer Optional*, AM. BAR ASS'N SECTION LABOR & EMP'T. LAW 4–5 (Mar. 2012) (citing Annette Demers, *Cultural Competence and the Legal Profession: An Annotated Bibliography of Materials Published Between 2000 and 2011*, 39 INT'L J. LEGAL INFO. 22, 24 (2011) (internal citation omitted)), [http://www.americanbar.org/content/dam/aba/events/labor\\_law/2012/03/ethics\\_professional\\_responsibility\\_committee\\_midwinter\\_meeting/mw2012\\_cultural\\_compentancy.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/events/labor_law/2012/03/ethics_professional_responsibility_committee_midwinter_meeting/mw2012_cultural_compentancy.authcheckdam.pdf). In June 2015, the American Bar Association incorporated “cultural competency” into the professional skills learning outcomes law schools should

navigate this legislative and regulatory realm. As such, the Drafting for Public Policy course builds on the introduction to professional identity and professionalism that is already a part of the Texas A&M curriculum and requires students to consider these important concepts as part of their work throughout the semester.<sup>39</sup>

### III. STRUCTURE OF THE COURSE

I received a very sound legal education and left law school “thinking like a lawyer.”<sup>40</sup> I was thrilled with my new skills in analysis, research, and writing, and my growing ability to communicate effectively.<sup>41</sup> Then, I returned to Capitol Hill and felt a bit like the proverbial fish out of water. Although my law school education and legal experiences while working gave me the skills to “get up to speed” quickly, life in the legislative branch was very different, and certainly had its own language and processes. This became more clear to me as my career progressed as a lobbyist and, later, as the director of legislative and public affairs for a federal agency.

As I progressed in my career, I set a goal for myself that I would pursue opportunities to teach at the law school level—in part to pay forward my incredible good fortune at having outstanding mentors throughout my legal career—so that I could (hopefully) better prepare future lawyers for a career in the public sector. Serendipity, luck, karma, or whatever it might be, placed me in the right place when Texas A&M purchased its law school and provided me the chance to develop the Drafting for Public Policy course, which is a prerequisite for the broader Residency Externship Program in Public Policy. Not only could I prepare our students for the types of assignments they might encounter in the public sector but I could perhaps instill in them a sense of the

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consider incorporating into their curriculum. See ABA Managing Director’s Guidance Memo: Standards 301, 302, 314 and 315 1–2 (June 2015) (Interpretation 302–1), [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/governancedocuments/2015\\_learning\\_outcomes\\_guidance.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_learning_outcomes_guidance.authcheckdam.pdf)

39. Texas A&M has begun to require its first year students to take a professional identity course. The course, which spans the entire year, introduces students to the *Roadmap* book and encourages them to begin developing their own identities early in their law school career. The course is then expanded upon in a variety of ways throughout the second and third year curriculums. For more on the professional identity course, see generally *Professionalism & Leadership Program*, TEX. A&M UNIV. SCH. OF LAW, <https://law.tamu.edu/current-students/academics/centers-clinics-programs/professionalism-leadership-program> (last visited Apr. 13, 2017).

40. Rakoff & Minow, *supra* note 31, at 607.

41. *Id.* at 597.

lawyer-statesperson; to see the law not just as a means to an end but as the embodiment of a greater calling, much as my mentors had done for me.

While the creation of this course was in large part a result of my own naivety when I first worked in government, it was designed with purpose both pedagogically and methodically. Professor Lawrence Mead of New York University notes that effective public policy research requires “three educations—in policy analysis, in political analysis, and in government.”<sup>42</sup> While this course certainly does not make experts of students, it does introduce them to “public policy” through the lens of each of these categories of learning—and with a lawyer’s analytical perspective.<sup>43</sup> In other words, it attempts to give them the skills “to generate the multiple characterizations, multiple versions, multiple pathways, and multiple solutions, to which they [can] apply their very well honed analytic skills.”<sup>44</sup> It also embodies the practices and traits that I witnessed and learned from my own mentors within the public sector. I was incredibly fortunate to have learned from men and women who embodied strong character and professional identity along with an incredible understanding of the political process that I continue to feel obliged to return the favor by teaching my students.

Of course, there are myriad definitions of “policy” and what makes it effective (or ineffective).<sup>45</sup> Returning to Lasswell and

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42. Lawrence M. Mead, *Teaching Public Policy: Linking Policy and Politics*, 19 J. PUB. AFF. EDUC. 389, 399 (2013).

43. See, e.g., Charles Szypszak, *Teaching Law in Public Affairs Education: Synthesizing Political Theory, Decision Making, and Responsibility*, 17 J. PUB. AFF. ED. 483, 484 (2011) (discussing how modern public affairs scholars have noted that the “understanding of law [ ] is important for preparing public officials to meet their professional responsibilities”). Szypszak observes that public policy programs that fail to incorporate an understanding of “law” can apply in the reverse to the law school curriculum, much as Lasswell and McDougal discussed back in 1943. *Id.* at 486; see generally Lasswell & McDougal, *supra* note 1. Thus, courses like those discussed at this symposium help create a two-way bridge between the “disciplines” of law and public policy. Szypszak, *supra*, at 483–84.

44. Rakoff & Minow, *supra* note 31, at 602. The various assignments in the course, including the representation of a client at different points in the policymaking process, can be likened more to the types of exercises business or medical school students engage in than our more typical law school curriculum. See *id.* at 603–04 (discussing how the “archetypical” assignment in business schools, for example, is much more open-ended and subject to myriad possibilities than the more traditional case model method).

45. *Id.* at 602–04; see also Christopher M. Weible, *Introducing the Scope and Focus of Policy Process Research and Theory*, in THEORIES OF THE POLICY PROCESS 4 (Paul A. Sabatier & Christopher M. Weible eds., 3d ed. 2014) (commenting on the “elusive concept of public policy” and its myriad definitions set forth in policy literature) (citations omitted). Merriam–Webster defines policy as “a definite course or method of action selected . . . to guide and determine present and future decisions” or “a high-level overall plan embracing the general goals and acceptable procedures [especially] of a governmental body.” *Policy*, MERRIAM–WEBSTER’S COLLEGIATE DICTIONARY (10th ed. 1993). Furthermore, the Bouvier

McDougal, for example, “[e]ffective policy-making (planning and implementation) depends on clear conception of goal, accurate calculation of probabilities, and adept application of knowledge of ways and means.”<sup>46</sup> As such, they advocated for courses that required a developing law student/lawyer to gain “goal-thinking, trend-thinking, and scientific-thinking” skills.<sup>47</sup> This course fits neatly into this description of curricular needs by incorporating each of these skills and building upon them throughout the course.

Lasswell and McDougal also believed that a solid legal education required students to gain “experiences that aid the developing lawyer to acquire certain skills of thought: goal-thinking, trend-thinking, and scientific-thinking.”<sup>48</sup> In so doing, students would “clarify [their] moral values (preferred events, social goals); . . . orient [them]self in past trends and future probabilities; [and] . . . acquire the scientific knowledge and skills necessary to implement objectives within the context of contemporary trends.”<sup>49</sup>

In this course, students take goal thinking, and a “clarification of values” beyond the wartime footing that certainly colored the Lasswell and McDougal article.<sup>50</sup> They are asked to consider the values of effective policymaking at the broadest level and the client’s values at the most narrow, thus incorporating both the Lasswell and McDougal concepts of humanity and dignity in the policy context and Kronman’s view that good counselors must consider the continuum, not just the client. Overarching this “funnel” is the clarification of one’s own values, which makes up the professional identity portion of the course.<sup>51</sup> From this “internal perspective” students move toward the consideration and drafting of public policy.

According to Lasswell and McDougal, “[t]rend thinking, in contradistinction to goal thinking, is conspicuously naturalistic in

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Law Dictionary defines policy as “[t]he sum purpose that a legal rule or institution is intended to achieve.” *Policy*, THE WOLTERS KLUWER BOUVIER LAW DICTIONARY DESK EDITION (2012).

46. Lasswell & McDougal, *supra* note 1, at 212.

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*; see, e.g., Nagan, *supra* note 5, at 2 (noting that “[o]ne of the most influential factors on the collaboration of McDougal and Lasswell was the crisis of World War II”).

51. This part of the course and its concomitant discussions dovetail with both the Lasswell and McDougal and Kronman theories of legal education. Kronman analyzes the various legal theories of contemporary legal education from Langdell’s “geometry of law” through the predominance of the law and economics model and concludes that there is a familiarity with Lasswell and McDougal’s emphasis on science and humanity and his own emphasis on the need for a restored lawyer-statesperson purpose in legal education. KRONMAN, *supra* note 3, at 170, 355.

form, characterizing as it does the structure of past and future events.”<sup>52</sup> Trend thinking, in the context of this course, occurs when law students new to the concept of public policy formation enter a new realm—or at least they think they do. This is so because trend thinking, in its most basic form, requires the examination of how an issue was “handled . . . in the past and to what extent the past should condition the present and the future.”<sup>53</sup>

As such, I contend that every law student, and every lawyer, is engaged in trend thinking based on this definition because even the most basic objective, predictive memorandum written by virtually every first year law student in this country is an exercise in trend thinking.<sup>54</sup> Students are predicting the future outcome of a case based on past precedent. By the end of their first year of law school, students hopefully feel as if they have become rather expert at this objective form of analysis.

The drafting course simply takes students to another, parallel level so that they can “orient [themselves] . . . in contemporary trends and future probabilities”<sup>55</sup> or in more direct terms, think strategically about a particular issue and its interrelation to broader policy. It asks them to make predictions based on past and present behavior and apply that to policy that affects future behavior. The course then asks them, through assignments that circle back to previously covered topics, to re-evaluate both their “trend-thinking” and the policy resulting from it in light of both the goals identified and the current arena in which policy is being formed. In other words, it is asking students “to think creatively about how to alter, deter, or accelerate probable trends in order to shape the future” in a way that achieves the policy goal.<sup>56</sup>

The scientific-thinking skill set is a matter of growing importance in public policy.<sup>57</sup> “Good” policy seemingly is defined

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52. Lasswell & McDougal, *supra* note 1, at 270.

53. Nagan, *supra* note 5, at 27.

54. For example, the textbook I use in my first year legal writing classes, *Legal Reasoning, Writing and Other Lawyering Skills*, explains that a “good [objective] office memo[randum] should evaluate every significant aspect of the relevant rule of law and issues, the previous cases that have interpreted the law, and the effect of the law and case precedent on the client’s factual situation.” ROBIN WELLFORD SLOCUM, *LEGAL REASONING, WRITING, AND OTHER LAWYERING SKILLS* 150 (3d ed. 2011). This review of the past, its application to the present case, and the predictive nature of the future exemplifies “trend thinking.”

55. Lasswell & McDougal, *supra* note 1, at 213.

56. *Id.* at 214.

57. See, e.g., NAT’L RESEARCH COUNCIL, *USING SCIENCE AS EVIDENCE IN PUBLIC POLICY* 50 (Kenneth Prewitt et al. eds., 2012) (“The goal is realizing better and more defensible policy decisions by grounding them in the conscientious, explicit, and judicious use of the best available scientific evidence.”).

more and more now as being based in “best practices” and empirical data.<sup>58</sup> For example, in the field of federal criminal sentencing the Supreme Court has placed a premium on the use of “empirical data” and “national experience” in the formation of federal sentencing guidelines and policy statements.<sup>59</sup> In fact, it places such a premium on these aspects of policymaking that it instructed courts that they could disagree with and not follow the federal sentencing guidelines for sentencing federal crack cocaine drug traffickers because those guidelines were based on congressional directive “and did not take account of ‘empirical data and national experience.’”<sup>60</sup>

Understanding how both the hard and soft sciences are incorporated into policy is an important tool in this course.<sup>61</sup> How one reads, interprets, and incorporates “science” into policy requires finesse and practice—and doing so often falls onto the staff or advisers (in other words, the lawyers) who support policymakers. But “scientific-thinking,” as envisioned by Lasswell and McDougal, went beyond actual understanding of the scientific methods of “observation” in the scientific realm. As they saw it, “[a]cquaintance with various methods of observation not only furnishes a sound basis for policy planning; it contributes directly to skill in the practical management of human affairs.”<sup>62</sup> Thus, in some ways their definition of “scientific thinking” meshes with the notions of professionalism and professional identity that also are woven throughout the course.

As demonstrated in the remainder of this part, the assignments given throughout the course build not just on the typical flow of

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58. *See id.* at 1–2 (explaining the history of science and evidence in public policy and concluding that “[k]nowledge from all the sciences is relevant to policy choices: the physical sciences inform energy policy on renewable efficiencies; the biological sciences inform public health policy on infectious diseases; the engineering sciences inform national defense policy on weapon design; the social sciences inform economic policy on international trade trends”).

59. *See* *Kimbrough v. United States*, 552 U.S. 85, 100 (citation omitted) (reflecting the “important institutional role” that the U.S. Sentencing Commission plays in the setting of federal sentencing policy and noting that it is uniquely positioned to do so because of its access to “empirical data and national experience, guided by professional staff with appropriate expertise”).

60. *Id.* at 109 (citation omitted).

61. *See, e.g.*, JANET BUTTOLPH JOHNSON & H.T. REYNOLDS, *POLITICAL SCIENCE RESEARCH METHODS* (7th ed. 2011) (explaining the intersection of politics and science and how “empirical research on political phenomena can be used to improve understanding of, and find solutions to, difficult problems facing governments and citizens like crime or poverty—this work is commonly referred to as applied research because it has a fairly direct, immediate application to a real-world situation”).

62. Lasswell & McDougal, *supra* note 1, at 215.

law school curricula but also follow the Lasswell and McDougal ideal of incorporating three sets of thinking into the process.

A. *Moving from Familiar to Unfamiliar: A Survey of Public Policy Documents*

Students at Texas A&M School of Law are required to take Legislation and Regulation during the first semester of their first year, which is one of the reasons I decided to join the faculty.<sup>63</sup> This requirement, combined with the inculcation of legal skills and substantive knowledge they gain in their first year through legal writing and doctrinal classes, positions our students (in theory, at least) to dive into public policy drafting with an understanding of the American legislative and regulatory processes. This knowledge does not always make it into their second or third year, having been replaced by the myriad of other subjects they are learning and experiences they are gaining. As such, this course is designed to start them with tasks they know—the memorandum (although, in this case, it is a briefing memorandum on a policy topic)—and move into the more “exotic” documents, such as position papers, hearing testimony, “one pagers,”<sup>64</sup> and comments<sup>65</sup> to

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63. I found the “LegReg” requirement to be an example of the forward-thinking of the faculty at what was, in 2012, Texas Wesleyan School of Law. To me, the inclusion of this course in the first year curriculum demonstrated the faculty’s recognition that, “[w]e rely on law to achieve many of our collective purposes, including economic regulation, social justice, and national security . . . through legislation and administrative action.” Edward Rubin, *What’s Wrong with Langdell’s Method, and What to Do About It*, 60 VAND. L. REV. 609, 654 (2007). In so doing, we “look to lawyers’ skills as policymakers, planners, and implementers” which is the theme that is further developed in this course. *Id.* Dean Morris and the Texas A&M faculty have greatly broadened our students’ exposure to these types of “lawyer skills,” not just through adoption of this course, but through the more typical doctrinal classes, so that students have the opportunity to learn “to read a case, a statute, a regulation, a contract, a lease, a complaint, an interrogatory, and [even] a treaty” by the time they graduate. *Id.* at 655 (discussing how law school curricula could change to include student exposure to all sorts of materials drafted and used by lawyers). Texas A&M also has moved to incorporate a “skills component” into its first-year courses so students in civil procedure, for example, draft motions and those in contracts actually see—and work with—a contract. *See id.* at 663.

64. “One-pagers” in the policy context refers to short (often one page) synopses of a particular policy position and the entity that is advocating for it. These documents provide key talking points and positions, often employing graphics and statistics, for easy reader use and understanding. For examples of one-pagers and guidance, see Betty T. Izumi et al., *The One-Pager: A Practical Policy Advocacy Tool for Translating Community-Based Participatory Research Into Action*, 4 PROGRESS COMMUNITY HEALTH PARTNERSHIPS: RES., EDUC., & ACTION 141 (2010) and Stephen M. Petterson et al., *Relying on NPs and PAs Does Not Avoid the Need for Policy Solutions for Primary Care*, 88 AM. FAM. PHYSICIAN 230 (2013), <http://www.aafp.org/afp/2013/0815/p230.pdf/>. Both of these are good examples of how to compile and distribute one-pagers because they illustrate the use of science in the policymaking process.



rulemaking.<sup>66</sup> In doing so, the course recognizes that education “is a developmental process”<sup>67</sup> and, by the end of it, hopefully, students recognize the interrelationship of the documents. A brief description of the assignments, the reasoning behind them, and the intended student outcomes and takeaways follow below. The outline below is based on a standard fourteen-week semester.

### 1. *The Course and the Book*

I considered many books (including crafting my own) for this course, but I ultimately settled on Catherine F. Smith’s *Writing for Public Policy: A Practical Guide to Communicating in the Policy Making Process*.<sup>68</sup> The book is extremely short but impactful. Most importantly to me as a professor, it is written for non-lawyers. This provides an important element to the course: It allows law students to see the policymaking and communication process through the lens of a non-lawyer. Students not only see how non-lawyers view the policymaking process, but how their analytic skills position them uniquely in the process. Moreover, the book helps them see how their combined analytic, research, and communication skills can be used to maximum advantage in a non-case-based environment.<sup>69</sup> Based on my experience with the

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65. Formal rulemaking typically requires solicitation for comments from the public prior to the final promulgation of the rule. Comments to rulemaking can be submitted by individuals or organizations, and may be highly complex and formal or in the form of an email or letter. For examples of how to draft and submit comments to rulemaking see OFFICE OF THE FED. REGISTER, A GUIDE TO THE RULEMAKING PROCESS (2011), [https://www.federalregister.gov/uploads/2011/01/the\\_rulemaking\\_process.pdf](https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf) and *How to Comment*, FED. COMM’NS COMM’N (Oct. 25, 2016), <https://www.fcc.gov/consumers/guides/how-comment>.

66. The Drafting for Public Policy course does not include assignments on legislative drafting or rule promulgation because those skills are covered in other classes in the Texas A&M curriculum. The course does, however, take the drafting of these documents into consideration as the discussion about the other documents covered in the course progresses. That is another benefit of the course: It allows the professor to draw on students’ previous course experiences and make them recall that material in a new setting. As such, it encourages the positive transfer of knowledge. See, e.g., THOMAS L. GOOD & JERE BROPHY, CONTEMPORARY EDUCATIONAL PSYCHOLOGY 215–16 (5th ed. 1995) (discussing the basis for positive transfer learning and explaining that courses that “encourage[ ] students to process [ ] material in ways that make it meaningful rather than by rote learning” help eliminate interference effects on learning transfer).

67. Rubin, *supra* note 63, at 659.

68. CATHERINE F. SMITH, WRITING PUBLIC POLICY: A PRACTICAL GUIDE TO COMMUNICATING IN THE POLICY MAKING PROCESS (4th ed. 2015).

69. See, e.g., *id.* at 27–28. In this section of the book, the author describes the “General Method of Communicating in a Policy Process.” *Id.* The general steps of “prepare,” “plan,” and “produce” are broken down into categories such as actors and problems. I contend that this is similar to the analytic approach taught to students during law school and exemplified in the legal analysis and writing organizational paradigms such as CREAC and PrEACH. See DAVID S. ROMANTZ & KATHLEEN ELLIOTT VINSON, LEGAL ANALYSIS: THE

course and comments students have made about applying what they learned to activities outside the classroom, the book and corresponding assignments seem helpful to students desirous of entering advocacy at a grassroots level where they will encounter a number of non-lawyers and must help craft messages and policy that addresses their needs.<sup>70</sup>

Also, because the chapters are short, there is less need for the professor to spend time ensuring that students “got” what was covered in a traditional question-and-answer format. Instead, the professor can spend time applying the reading both to the examples provided in the book as well as current events and policy issues. Students are encouraged to bring in examples of what they read outside of class and discuss current events in the context of the thematic questions of the day as well as from a programmatic lens of good drafting.

Each block of the course is also guided by a set of thematic questions laid out in the syllabus to further guide students in their reading. The thematic questions are designed to encourage reflection, promote a sense of professional identity, and further develop recognition that the writing, research, and analytic skills students have learned up to this point are still very much applicable.<sup>71</sup> The thematic questions also guide the discussion of the concepts at the start of a new block of material and conversations during each class.

In the first class session, students are introduced to the concepts and constructs of public policy. Although many students enter law school with an undergraduate degree in some form of political science, my observations suggest some uncertainty about the political process at the start of class.<sup>72</sup> The course is designed

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FUNDAMENTAL SKILL 120 (2d ed. 2009) (discussing the different organizational paradigms lawyers use to analyze and communicate in writing).

70. Grass roots is defined as “the basic level of society or of an organization [especially] as viewed from higher or more centralized positions of power.” *Grass roots*, MERRIAM-WEBSTER DICTIONARY (10th ed. 1993). Grass roots entities include “neighborhood or block associations, community clubs, workplace voluntary groups, and student organizations,” among many others. SMITH, *supra* note 68, at 123. Thus, by definition, it is likely that these entities often will consist of few, if any, lawyers.

71. *See, e.g.*, 2007 CARNEGIE REPORT, *supra* note 4, at 87 (noting that while “the primary focus of future lawyers’ education is legal analysis . . . developing lawyers must at some point learn [the] demanding skills” of practice).

72. According to the Law School Admissions Council, in academic year 2015–2016, enrolled students with an undergraduate major in political science constituted the majority of enrolled students at 9,030. LSAC SOC. SCI. RESEARCH, UNDERGRADUATE MAJORS OF APPLICANTS TO ABA-APPROVED LAW SCHOOLS [ACADEMIC YEAR 2015–2016], [http://www.lsac.org/docs/default-source/data-\(lsac-resources\)-docs/2015-16\\_applicants-major.pdf](http://www.lsac.org/docs/default-source/data-(lsac-resources)-docs/2015-16_applicants-major.pdf). The next largest defined category of students (2,106) had undergraduate majors in criminal justice. *Id.*

to (re)introduce students to basic definitions of public policy. It borrows extensively from policy texts to give students this “vocabulary” for discussion and participation both throughout the course and in policymaking more generally. It reinforces that lawyers control every word used, so a sound vocabulary and understanding of a word’s potential impact is essential.<sup>73</sup>

To that end, the course begins with the definitions of “public” and “policy,” which supplements the introduction to public policymaking included in the Smith text.<sup>74</sup> Students then examine and discuss Eugene Bardach’s “[E]ightfold [P]ath” to policy analysis.<sup>75</sup> Bardach’s approach to policy analysis fits well within the course because he sees policy analysis as a “social and political activity.”<sup>76</sup> He notes that the realm inhabited by policy analysts includes “colleagues drawn from law, engineering, accounting,” and other disciplines so that students begin to see how lawyers fit within a multidisciplinary team when drafting public policy.<sup>77</sup> Emphasizing that policy analysis is about solving problems, Bardach defines his eightfold approach as—

Defin[ing] the Problem[;]  
 Assembl[ing] Some Evidence[;]  
 Construct[ing] Alternatives[;]  
 Select[ing the] Criteria [to use in the problem solving;]  
 Project[ing] Outcomes[;]  
 Confront[ing] the Trade-offs[;]  
 Decid[ing to Take Action (or Not); and]  
 Tell[ing] [the] Story<sup>78</sup>

This “path” is then used as the structural backdrop to each of the class discussions and assignments that follow in the course.<sup>79</sup> The Bardach and Smith texts are particularly well-suited for one

73. This is consistent with the Lasswell and McDougal approach that helped form this course in that they advocated for graduating law students to possess “legal technicality” that they believed included the “command of vocabulary” used by courts but applies equally in the policymaking setting. Lasswell & McDougal, *supra* note 1, at 216.

74. SMITH, *supra* note 68, at 1–16 (providing an overview of policy and its promulgation).

75. EUGENE BARDACH, A PRACTICAL GUIDE FOR POLICY ANALYSIS: THE EIGHTFOLD PATH TO MORE EFFECTIVE PROBLEM SOLVING (4th ed. 2011).

76. *Id.* at xv.

77. *Id.* at xvi.

78. *Id.*

79. The “path” is not always linear, and this is emphasized throughout the course. As Bardach notes, “[t]he primary utility of this structured approach is that it reminds [students] of important tasks and choices that otherwise might slip [their] mind; its primary drawback is that, taken by itself, it can be mechanistic.” *Id.* at xvi–xvii.

another because both stress the fluid nature of policymaking, analysis, and drafting processes. As Bardach notes, “policy problems [can] appear as a confusing welter of details [tied up with] personalities, interest groups, rhetorical demands, budget figures, legal rules and interpretations, bureaucratic routines, [and] citizen attitudes. . . .”<sup>80</sup> During this lecture, students are asked to think about the approach to an issue, including whether to define it as a “problem” at all because doing so immediately impacts the framing of the message and “solution.”<sup>81</sup>

After this more typical lecture discussion, the remaining classes are structured to be more interactive and example-oriented. Chapters two through four of the Smith text are taken somewhat out of order. The next class begins with chapter three of the text, “Definition: Frame the Problem.” In so doing, students are given further context to the notion of describing something as a “problem” and how doing so suggests viewpoints that could be taken in policymaking by the various stakeholders. As examples of how this plays out (and providing a way in which social and cultural policy can be adopted into the course), during this second class, students are broken up into groups of “stakeholders” in a particular issue. During this most recent semester, one of the issues discussed was the current heroin and opioid epidemic in the United States.<sup>82</sup> Instead of the “typical” prosecutor, defense counsel, and legislators, students were broken up into representatives for emergency medical personnel, child and family services representatives, mental health providers, and drug manufacturers. Each of these groups had a significant stake in the epidemic and a voice that policymakers should hear. Students were then asked to “define the issue” through the lens of their assigned group. The groups then presented these positions and considered, based on how they framed the issue, which stakeholder groups might be a

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80. *Id.* at xvii.

81. *Id.* Bardach discusses this inherent tension in terms of “[i]ssue rhetoric.” *Id.* at 4. He notes that over reliance on issue rhetoric often results in “partisan or ideological flavor.” *Id.* at 4. He also points out that issue rhetoric can result in issue labeling, which in itself can result in identifying more than one problem in a topic. *Id.* at 4–5. As discussed more below, *see infra* Part III.A.3, the current “opioid epidemic,” for example, may encompass a variety of conditions including the need for revised criminal penalties, improved mental health care, improved family and child services, improved or increased resources for first responders, and emergency room personnel.

82. Students were given fact sheets from the United States Sentencing Commission on heroin trafficking, substance abuse trends in Texas, news articles, and testimony from a variety of scientific, community, and healthcare providers.

natural ally or supporter of their particular approach to solving the problem.<sup>83</sup>

The third class picks up with chapter two and the bedrock of the book—"Communicating." I reverse the chapters and presentation of the material in this way because one cannot be expected to communicate effectively about an issue if he or she does not understand its underpinnings.<sup>84</sup> As such, this third class effectively builds on the materials covered during the prior courses in a hands-on manner. Specifically, during this week of the course, students are given a chance to participate in a "roundtable" similar to the less formal exercise they engaged in the prior week.

Students arrive in class and are given a "flyer" announcing the roundtable and its topic. They also are assigned a "stakeholder" group. Acting as the moderator of the roundtable, the professor welcomes students to the evening's discussion and provides them with background materials on the topic.<sup>85</sup> Students then break into their respective stakeholder groups to "frame the issue," develop their positions, and prepare a one minute "elevator speech" to present their respective positions to the roundtable.<sup>86</sup> After that, we discuss commonalities and possible points of contention. All the while, students are told to take notes throughout the roundtable.

These notes, along with the materials provided at the start of the class, and the professor's notes of the stakeholder elevator speeches, provide the materials used for their first assignment—a briefing memorandum to a legislator's chief of staff. Shifting the student's role in the process "forces" students to view the discussion in yet another light and consider how to frame the issue for a stakeholder who knows very little about the topic or the stakeholders involved. The assignment also gives them a sense of fa-

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83. This also coincides with the first step in Bardach's Eightfold Path. One of the caveats that Bardach highlights about conducting policy analysis is slipping the conclusion into the formation of the problem. BARDACH, *supra* note 75, at 8. Part of the class discussion during this session is identifying when students, representing a particular stakeholder interest, slip the solution into the definition of the issue.

84. See CHARLES R. CALLEROS, *LEGAL METHOD AND WRITING* 9 (6th ed. 2011) ("First and foremost, you must have something to say. You cannot expect to communicate clearly or persuasively unless you have a clear understanding of the points you wish to express.")

85. The materials are typically pulled from a variety of sources including news articles, testimony, scientific journals, and presentations so that students are exposed to a variety of documents that support policymaking and implementation.

86. Students specifically are not told in advance about the exercise or their assigned stakeholder groups. Part of the implicit purpose of the exercise is to have students think quickly, analytically, and strategically about the issue. The exercise also forces them to engage in listening and observation because of the "newness" of the materials being covered.

miliarity: writing an objective and strategic memorandum that can be more easily compared to their previous law school writing and analysis assignments.

The fourth class represents the final block of the introductory section of the course. During this week students read chapter four of the Smith text: “Evaluation: Analyze and Advise.” Although previous exercises have already employed aspects of analysis and decision, this week is dedicated to exploring it in more depth. It is also here that students explore the use of data, best practices, and experience-based research in policymaking. Of course, these materials are used in every aspect of policymaking, but emphasizing it here gives students a new perspective from which to view the materials given to them previously.<sup>87</sup>

For example, in the class discussion of the opioid epidemic, students received materials from the Drug Enforcement Agency as well as testimony from leading scientists about the issue. Students are asked to revisit these materials and discuss how the data and science are used in framing the issue—and how once the issue is framed in a certain way, students discuss how all other information is viewed either from that position or in opposition to it.<sup>88</sup> The class discussion also encompasses Bardach’s second point of the Eightfold Path, “assembling evidence.”<sup>89</sup> Students explore what evidence is available on a given issue, what sources of additional evidence or expertise are available, and to what extent, if any, that evidence is agenda-driven. For example, students explore how data and evidence can be manipulated to fit a rhetorical position and how to identify when this occurs.<sup>90</sup>

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87. Emphasis of evidence and data at this juncture is also consistent with the notion of transfer learning, which can be problematic for “older students and adults, especially when they are learning abstract scientific concepts that contrast with naive ideas about the world that they have built through concrete experiences.” GOOD & BROPHY, *supra* note 66, at 222. By emphasizing the importance of data and evidence—including the notion that data and evidence can be presented in an agenda-driven way—students may “confront [their own] common misconceptions” about a policy issue, and, thus, learn to assimilate material, including material learned in other classes and contexts, into a new schema. *Id.* at 223–24.

88. New in the fourth edition of the Smith book is an appendix on using data and science in policymaking that is very accessible and useful in getting students acclimated to this type of evidence. SMITH, *supra* note 68, at 215 app. B.

89. See BARDACH, *supra* note 75, at 13. See also *id.* at 11 (discussing the assemblage of evidence and the fact that, as a policy analyst, one is engaged in two things: “thinking. . . and hustling data that can be turned into evidence”). During this block, students also are encouraged to consider the definitions of data, evidence, and information as used in the policy context. *Id.* at 11–12.

90. For a broader discussion of the potential pitfalls associated with evidence in policy analysis and drafting see *id.* at 12–15 (describing best practices for evaluating what evidence to collect and use in policy analysis).

The remaining class sessions focus on specific documents prevalent in policymaking, including another round of briefing memoranda, hearing testimony, position papers, and rulemaking comments. In particular, the course allows for three weeks dedicated to exploring various aspects of hearing testimony because it can be one of the most often encountered types of drafting a policymaking lawyer encounters during her career. For example, students discuss and explore the purposes of testimony: both in terms of giving and receiving it. Students are encouraged to see the similarities and differences in purpose between the submission of testimony to a legislative or administrative body and the submission of a brief or motion to a court.

Significant course time is also spent studying how partisanship and politics impacts witnesses and the receipt of their testimony by the governing body. It is at this juncture in the course that students are reminded of one of the most important questions that frame the formation of policy: Why now? Students are encouraged to ask questions about testimony such as, "Who asked the witness to testify? Are they there as an expert "fact" witness or as a political representative of their organization or entity?"

This part of the course also explores the difference between testimony given and received at the state and federal level. Public hearings at any level of government are opportunities for individuals to "offer valuable knowledge to policy makers and administrators."<sup>91</sup> The way in which the hearings are organized (including the topics covered), the timing of those hearings, and the witnesses vary by governmental entity.<sup>92</sup> Importantly, the text notes that "[l]egislative hearings are characteristically more freeform than legal hearings in the administration of justice."<sup>93</sup> The overarching theme of this course block is the importance of witness testimony to the policymaking process because it provides witnesses with the opportunity "to talk directly with policy makers, and to make personal or professional knowledge useful for solving problems."<sup>94</sup>

Next, students are asked to consider the role of legal staff in preparing a witness to testify. Students are asked to watch various clips of testimony and consider how the witness or witnesses

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91. SMITH, *supra* note 68, at 162.

92. *See generally id.* at 162–65 (discussing the public hearing process broadly and noting, for example, that at the federal level witnesses testify only at the request of the committee convening a hearing but at state and local levels "the witness list is more open").

93. *Id.* at 164.

94. *Id.* at 165.

were prepared. Students examine everything from the size and capacity of the room to the cameras and recording devices being used, to the setup of the chamber itself. Students are asked about the amount of time a witness should be prepared in a mock setting, and how detailed their knowledge of the format and the questions to be asked at the hearing should be.

“Questioning [in a public hearing] is always political, and sometimes it is bluntly partisan.”<sup>95</sup> As such, my career in public service has demonstrated to me that a witness who is well-versed not just on the substance of the hearing but the intended outcomes, both explicit and implicit, will be better prepared for the hearing. Moreover, if staff representing a witness (or the witness herself) have good working relationships with the hearing organizers, they can work with them to direct questions and topics. This provides witnesses with better insight into the hearing and better information on which to base their testimony.<sup>96</sup>

As such, students explore the differences between a witness who has advance knowledge of the hearing’s explicit and implicit purposes and questions that will be asked (whether they are designed to be fact-finding or to score points, for example), and those witnesses who receive little advance information about a hearing’s expected outcomes.<sup>97</sup> Students also explore the differences between hearing participants who are well-versed on a particular topic and those who are not. Again, students are asked to compare this level of preparation with that given to oral argument preparation—trying to ascertain if a court will be “hot”—as in it will ask a lot of questions—or “cold”—as in it allows counsel to give their arguments with very little questioning or commentary.

Finally, with respect to testimony, students explore the difference between submitting written testimony for the record and giving oral testimony at the beginning of a proceeding. Students are given clips of hearing testimony to review, both “good” and “bad” examples, and are asked to discuss what impact their oral testimony had on the audience. Students are encouraged to ask questions about whether poorly delivered oral testimony impacts a witness’s credibility or authority on a subject. They also evaluate the efficacy of constituent testimony, particularly at the federal level. Does having a directly impacted non-professional witness

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95. *Id.* at 164.

96. *See generally id.* at 166 (explaining that witnesses should know the context of a hearing, the message they intend to deliver, their role in the hearing, and the overall communication situation such as whether the hearing will be covered by the press).

97. *See id.*



help or hurt the likely resolution of an issue? Does the average person's testimony tell the story that you want delivered or does it hurt that story? By exploring these many questions, students learn not only what makes an efficient and useful witness, but also what makes an efficient and useful hearing. Thus, they are prepared both to help their principals testify before a governmental body and set up a hearing for that body.<sup>98</sup>

The last two class sessions are devoted to rulemaking. Students are (re)introduced to the administrative side of policymaking<sup>99</sup> and the importance of the notice and comment process. During this block of the course, students examine the goals of providing a notice and comment period for regulatory action and what makes for effective comments.<sup>100</sup> In addition to the material provided in the Smith text, students are instructed to visit the Regulations.gov website,<sup>101</sup> and review the tips provided on submitting effective comments.<sup>102</sup> This section of the course also includes exploration of the differences between state and federal rulemaking, the effectiveness, or ineffectiveness, of commentary at the state level, and the impact of "narrowly interested groups" on the rulemaking process.<sup>103</sup>

Students are provided examples of materials across the spectrum of local, state, and federal rulemaking commentary. They

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98. Part of the fourth exercise described more fully below requires students to examine and comment on staff action throughout a hearing. *See infra* Part III(A)(3). Students are told to observe whether staff engaged with those presiding over the hearing, listened to the testimony or spent time on their electronic devices, or took notes during the proceeding. *Id.*

99. Again, students at Texas A&M School of Law, at a minimum, already have been exposed to the regulatory side of policy through their first year Legislation and Regulation course.

100. For example, a significant portion of the discussion is devoted to the effectiveness of "carefully prepared comments" and "mass emails or letters." SMITH, *supra* note 68, at 184. Smith indicates accurately that substantive, well-drafted commentary is often more effective than mass mailings in influencing change in a regulation. *Id.* Students are taught, however, that mass communications can also have an impact in policymaking and are another possible tool in the commentary arena. *See, e.g.,* Stokols, *supra* note 11 (discussing the power of Twitter on the 2016 election and the formation and implementation of policy under President Trump); *see also* SMITH, *supra* note 68, at 166 (discussing the importance of knowing how a hearing will be covered).

101. REGULATIONS.GOV, <https://www.regulations.gov> (last visited Oct. 23, 2016).

102. *Tips for Submitting Effective Comments*, REGULATIONS.GOV, [https://www.regulations.gov/docs/Tips\\_For\\_Submitting\\_Effective\\_Comments.pdf](https://www.regulations.gov/docs/Tips_For_Submitting_Effective_Comments.pdf) (last visited Oct. 23, 2016). The information provided on submitting effective commentary is excellent for reinforcing the need for clarity and cohesion in policy drafting that permeates this course. The suggestion that commentary be "constructive" and "information-rich" is included in the grading rubric and instructions for the final assignment in the course. *Id.*

103. SMITH, *supra* note 68, at 186. Smith notes correctly that public participation in the rulemaking process, particularly at the state level, can be minimal. *Id.* As a result, the comment process often is dominated by special interest groups resulting in policy that may not accurately reflect the impact it will have on the larger constituency. *Id.*

are asked to review the material and note substantive variations, as well as the effectiveness of the organization, word choice, and the material included. They are reminded that implicit and explicit messages can assist in the effectiveness of commentary and that, as lawyers, they should be cognizant of that.

## 2. *The Timing of the Assignments*

The course includes submission of six graded assignments,<sup>104</sup> averaging an assignment every other week after the first two weeks of the course. The longest assignment given is the last one, for which a page suggestion is given but not required. The relative brevity of these assignments serves several purposes, the most important of which is to give students a sense of the time constraints public policy players often face. A close second to that is stressing the importance of brief, impactful materials over long policy discourse. A law school graduate entering the public policy workforce will find out pretty quickly that, while an issue may be kicked around the legislature for months or years, there are always spikes of activity where a seemingly calm Monday suddenly becomes the equivalent of a Category 5 hurricane. As such, students are generally given no more than a week to complete an assignment.

Students are instructed that, unlike expectations in a more traditional legal writing class, the time given for a particular assignment is not necessarily the time it takes to substantively draft the document. Instead, students should focus on the editing, strategy, and application of “thinking like a lawyer” to the project. As highlighted throughout this article and the Drafting for Public Policy course, the emphasis is on every word, every detail, and the delivery of message. Attention to tone, message, and audience is critical so students are told to spend time on refinement, as much as (if not even more so) content development.<sup>105</sup>

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104. One of the purposes behind the course’s structure is to provide students with a complete “public policy portfolio” that can be shared with potential employers. *See, e.g.,* Elizabeth Keller et al., *What Legal Employers Want . . . and Really Need: Report from a Conference at Boston College Law School*, 25 *THE SECOND DRAFT* 4, 4 (2011) (noting that a panel of legal employers indicated that law school graduates should be able to, among other things, “evaluate their own work critically; and deliver a precise and concise analysis both orally and in writing, regardless of the type of document”).

105. Likewise, a good portion of the grade for each assignment comes from tone, audience awareness, and word choice. *See infra* Part IV.

### 3. *The Assignments*

The basic assignments listed below do not change from year to year; however, the topics covered in each are changed to reflect current topics of interest and relevance. For example, in 2015, criminal justice reform at the national level was being widely discussed. Bipartisan legislation, the Sentencing Reform and Corrections Act of 2015, was introduced and cosponsored by a bipartisan group of senators led by Senator Charles Grassley of Iowa.<sup>106</sup> Among other things, the bill reformed federal drug trafficking penalties and reduced the application of statutory mandatory minimum penalties for certain nonviolent, low-level offenders.<sup>107</sup> As such, many of our assignments and class discussions covered aspects of criminal justice advocacy and policy.<sup>108</sup>

In 2016, in preparation for the 85th Session of the Texas Legislature opening in January 2017, topics covered included issues with a state and federal nexus. The course covered such diverse topics as agriculture and drought, oilfield theft, the growing craft brewing industry, the heroin and opioid epidemic, and the use of cannabis oil to treat intractable epilepsy in children.

The assignments cover multiple topics and issues for a number of reasons. First, by switching topics students must engage, at least minimally, in the Eightfold Path for each assignment, thus enforcing their learning transfer. Second, new topics allow students to engage in issues they may enjoy (or not dislike)—not every student will enjoy criminal justice or energy policy so this lets the course demonstrate its applicability regardless of topic. Third, this structure allows for more integration of both professional identity and cultural competency.<sup>109</sup> If successful, students will

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106. The Sentencing Reform and Corrections Act of 2015, S. 2123, 114th Cong. (2015).

107. *Id.* §§ 101–109 (2015). Also being discussed during this time was President Obama's clemency efforts on behalf of federal drug offenders. During his presidency, President Obama pardoned 212 people and commuted the sentences, mostly those for federal drug trafficking offenses, in 1,715 cases. *Clemency Statistics*, U.S. DEPT OF JUSTICE (May 12, 2017), <https://www.justice.gov/pardon/clemency-statistics>.

108. In particular, the course covered mental health and substance abuse issues, including the opioid epidemic and explored how the messaging of bills like S. 2123 and testimony about the opioid epidemic focused more on treatment and addiction than criminal activity.

109. See Banuelos et al., *supra* note 38, at 5. According to the ABA, “[c]ultural competency requires the lawyer to take the affirmative step to acquire the sensitivity and understanding of what is the ‘other,’ and learn the means to bridge the differences in order to competently represent a client’s interest, regardless of whether the ‘other’ is the lawyer’s client or adversary.” *Id.* Thus, each of these assignments builds on the course’s desire to ensure that an issue or problem is viewed from multiple facets. The assignments also are designed to bring in minority communities and client views to ensure students “become culturally competent in order to become the diligent, competent, and zealous advocate that is expected of him or her to be.” *Id.*

begin to view the news and current events through the multi-tiered system of policy analysis, political analysis, and government, with the sharpness of a lawyer.<sup>110</sup> Throughout each exercise (as well as the corresponding class discussion), however, students are encouraged to think about “alternative solutions as well as appropriate grounds for choosing among them”<sup>111</sup> even if it means the client does not get everything he or she hoped for at the outset. Thus, the assignments also help reinforce the notion of the lawyer-statesperson.<sup>112</sup>

### Assignment One—The Overview Memorandum

The first project is an overview memorandum to a supervisor that focuses students on the concepts of identifying an issue, framing an issue (problem), and proposing possible solutions and areas of further exploration. The assignment also is designed to give the students something that is familiar to them—a memorandum—so that they are gradually introduced to the world of drafting for public policy and can see its commonalities with other legal drafting they have done throughout law school. The assignment is given a short recommended page limit to force students to think about clarity, cohesion, and conciseness in the drafting of these types of materials for busier-than-usual policymakers and stakeholders. They also are encouraged to write the document so that it could be “passed up the chain” and not require further explanation by the time it reaches the principal.

### Assignment Two—Updated Initial Overview Memorandum

Building on the materials from the previous assignment, this assignment provides students with more material “from the record.” They conduct additional research on the topic from assignment one, identify additional stakeholders and coalitions, suggest

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110. The course could work easily as well if the assignments covered a single topic from the moment an issue arises to the moment it is enacted through regulation.

111. Rakoff & Minow, *supra* note 31 at 604. In a course such as this, the “legal, normative, and practical considerations” of our actions are discussed so that students can begin to see a policy issue in these terms without having to stop and think about it. *Id.*

112. KRONMAN, *supra* note 3, at 147 (discussing the notion that lawyers acting in an advocacy capacity, including lobbyists, are seen as “hired guns” and this is far too narrow a view). Thus, being a good lawyer and counselor means that the ends are not always the primary focus. *Id.*

witnesses for hearings, and include a recommendation on whether a policy solution should be pursued with respect to the problem.<sup>113</sup>

### Assignment Three—Position Paper

The third assignment takes students into new territory. This assignment culminates in the drafting of a two- to three-page position paper for a client. The purpose of this assignment is to have students employ all of their analytic skills and newly-found drafting skills in a more creative fashion. The assignment requires issue understanding, framing, synthesis, and advocacy.

### Assignment Four—Note-taking and Hearing Summary

This assignment is included to begin to introduce students to the impact of hearing testimony. It also requires them to practice sitting in one place for extended periods of time while exercising powers of observation.<sup>114</sup> The assignment requires students to provide the notes they took during the hearing so that the instructor can see how they viewed the hearing and what they took away from it. They also are asked to provide observations in their memorandum about the effectiveness of witness testimony and make suggestions about what their future witnesses should or should not do when testifying. These observations help them prepare for the next assignment, which requires them to draft and deliver their own testimony.

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113. In 2016, the issue for assignments one and two was oilfield theft in Texas, a state and federal issue with significant impacts on the energy sector—particularly in west Texas. Legislation was introduced to address it during the 84th Legislative Session but Governor Abbott vetoed it as being overly-broad in application. In advance of the 85th Legislature, new language is being considered and students were required to provide information on the scope of that language and its potential impact on the stakeholders. See, e.g., *Jim Malewitz, Texas Lawmakers Seek Abbott's Blessing on Oil Theft Crackdown*, THE TEX. TRIBUNE (Nov. 29, 2015), <https://www.texastribune.org/2015/11/29/texas-lawmakers-seek-abbotts-blessing-oil-theft-cr/>.

114. See, e.g., Donna F. Howard, *Learning to Listen, Learning to Be Heard*, GPSOLO MAGAZINE, Apr./May 2006 (“The ability to focus, attend, and truly listen to what is being communicated, and then respond appropriately, is essential in interactions with office staff, clients, and other lawyers. These skills may be the difference between good lawyers and great lawyers.”). This assignment also fits within the Lasswell and McDougal model by emphasizing observation:

Throughout the length and breadth of modern society decisions are modified on the basis of what is revealed by means of intensive or extensive observation of human life, the procedures varying all the way from the prolonged interviews of a psychoanalytic psychiatrist to the brief questions of the maker of an opinion poll.

Lasswell & McDougal, *supra* note 1, at 215.

### Assignment Five—Oral Testimony and Accompanying One-Pager

This assignment allows students the opportunity to draft testimony—but in shortened form. The assignment focuses on skills of communication, persuasion, and the creation and delivery of impactful testimony. The inclusion of the one-pager allows students to see how advocacy works both in oral presentation and in supporting documentation. Students present their oral testimony in class and critique one another on delivery.<sup>115</sup>

### Assignment Six—Comments to Rulemaking

The final and most extensive assignment during the course is to provide comment on a rule. The introduction to this section of the course provides students with a broad survey of administrative law and where the comment process falls within it. It is not designed in any way to supplant the Administrative Law course offered at the school, but it bridges the gap between the first year Legislation and Regulation course and the more advanced Administrative Law. It also recognizes the importance of the regulatory scheme in society and its broad application in substantive fields such as “environmental law, securities law, and a variety of other courses on specific regulatory regimes.”<sup>116</sup>

## IV. CONCLUSION

As demonstrated by the vast array of courses and programs discussed at this very important symposium, law schools have taken the challenge to provide a “sense of purpose” and offer training, skills, and information “common to all policy-makers” so that their graduates “cannot escape becoming a better lawyer.”<sup>117</sup> The Drafting for Public Policy course developed at Texas A&M University School of Law is an important part of that challenge. The course

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115. For purposes of this assignment, students are instructed to draft oral testimony to fill a five-minute window.

116. Rubin, *supra* note 63, at 659. As envisioned by Rubin in his article on restructuring the law school curriculum, this assignment and portion of the course provides, if not comprehensive, at least solid, coverage of the field of general administrative law “for students who have no interest in it and do not choose to take any upper-class courses in that field.” *Id.*

117. Lasswell & McDougal, *supra* note 1, at 216.

endeavors to ensure that students can contribute positively to the field of public policy and act as leaders in the field.

The course does so in a multitude of ways, such as providing multidimensional focus on current events, incorporating cultural awareness, cultural context, and concepts of professional identity at a pedagogical and substantive level, and encouraging students to think of themselves as lawyer-statespeople. In so doing the course attempts to vest students with a sense of purpose, mission, and “care[ ] about the public good.”<sup>118</sup> This hopefully allows them to see their impending legal careers not simply as one of end results but as a continuum of learning and civic engagement.

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118. KRONMAN, *supra* note 3, at 14.

## APPENDIX A

**SAMPLE SYLLABUS**

The following syllabus, including reading assignments and projects, is based on a fourteen-week course schedule. As described above, it can be adapted to reflect current issues in local, state, and federal policymaking. It also leaves plenty of room for the development and discussion of professional identity issues, leadership, and cultural context. The course can also be modified to allow for the progression of a single policy issue throughout each assignment rather than the different topics/clients approach that I employ in the course.

**Drafting for Public Policy**  
**Course Overview**

Welcome to drafting for public policy! According to the American Bar Association, one-in-eight lawyers practice in the government or public sectors and, even if a lawyer does not practice solely in the public sector, his or her work is impacted by public policy at every turn.

This course introduces students to the various forms of written (and oral) communication encountered in the public policymaking process. In addition to gaining an overview of “public policy,” students will learn about the various communication strategies and skills necessary to participate effectively in the policymaking process.

Students will learn specifically about the components of written communication in public policymaking and also will participate in various public policymaking exercises to gain familiarity with the process. Students will demonstrate the skills learned through a series of written exercises that will culminate in a portfolio of work demonstrating the student’s skill in drafting various public policy documents.

**Course Objectives**

At the end of this course, students should have—

- A basic understanding of public policy and what those terms mean;



- Competency in articulating problems and solutions in a clear, comprehensive, and cohesive manner—both orally and in writing;
- A solid understanding about the various types of written and oral communication strategies and techniques in which public policy stakeholders engage;
- A solid understanding of legislative and rulemaking processes; how those processes shape public policy; and how this course builds upon what they already have learned in their Legislation and Regulation and Administrative Law courses;
- A portfolio of written work product that demonstrates their skill level and proficiency in drafting various types of “public policy” documents; and
- A solid understanding of the role a lawyer plays in the public policy arena and the pressures and expectations that such a lawyer may face in his or her career.

### **Textbook**

Catherine F. Smith, *Writing Public Policy: A Practical Guide to Communicating in the Policy Making Process* (4th ed.)

### **Teaching Method**

This course involves a number of teaching methods including the Socratic method, lecture, problem-based discussions, group and individual work, written and oral exercises, and broad discussion of the material covered. The professor expects students to be prepared for class, including having completed a meaningful review of **all** material assigned prior to class.

### **Grades**

This course follows the grading scale and grading policies outline in Academic Standards 8.1–8.54, which may be found in the 2016–2017 Student Handbook available on the Law School’s website. More detailed explanations of the types of assignments completed in this course follow this section. Grades in this course are weighted as follows:

Project 1–	5 %
Project 2–	10 %

Project 3–	15 %
Project 4–	5 %
Project 5–	25 %
Project 6–	30 %
Class Participation–	10 %

Please note that this class requires interaction and engagement among students and the professor in order to be the most beneficial. Class participation, therefore, is essential. The professor will include in the participation consideration your preparation for class, your engagement in the discussion, your attentiveness to the discussion, and your willingness to engage in the topic being discussed.

### Reading Assignments

The professor reserves the right to change or supplement the reading assignments listed below.

For each week of class, read the material assigned carefully and in the context of the theme questions. The theme questions will frame the class discussion, in-class exercises, and written assignments completed throughout the semester. Students are expected to have completed the reading and engage actively in the class discussions.

Class	Topic & Theme Questions	Reading Assignment
1	Public Policy— <i>What is it?</i> <i>What are the dynamics of the policy-making process?</i> <i>What skills and strategies are needed for successful public policymaking?</i> <i>What is “public interest” and how does it relate to public policy?</i>	Smith Preface; pp.1–16; Appendix A

2	<p>Framing the Problem—  <i>How does policy get formed?</i>  <i>Why is defining the “problem” critical to policymaking?</i>  <i>How does stakeholder viewpoint and interest impact the framing of the problem?</i>  <i>How does the definition of the problem impact the formulation of the solution?</i>  <i>How is policy advocacy and the framing of the “problem” different (or the same) from your traditional legal analysis?</i></p>	Smith pp. 36–61
3	<p>Communicating in the Process—  <i>What are the purposes of policymaking communication?</i>  <i>What are the different viewpoints that impact policy communication?</i>  <i>How do stakeholders communicate and to whom?</i>  <i>How does policymaking writing differ from other types of written communication? How is it the same?</i>  <i>What does policy communication require?</i></p> <p>Communication, Persuasion &amp; Public Policy: Evaluating What Works—  <i>What makes good writing?</i>  <i>What words best communicate a position?</i>  <i>What words best communicate core concepts?</i>  <i>How do you maximize brevity and impact?</i>  <i>How does your written communication support and promote your oral communication and vice versa?</i></p>	Smith pp. 18–35; Appendix A

4	<p>Special Guest: Jim Tramonte will speak to the class about “Public Policy: What Works, What Doesn’t.”</p>	<p>More information on this class will be provided during our first class meeting.</p>
5	<p>Briefing Memoranda &amp; Opinion Statements—</p> <p><i>What are the purposes of a briefing memorandum?</i></p> <p><i>What kinds of information are necessary to a policymaker/stakeholder?</i></p> <p><i>How does your target audience impact the content of a briefing memorandum?</i></p> <p><i>How do briefing memoranda and opinion statements differ?</i></p> <p><i>How does tone impact the readability of a document?</i></p>	<p>Smith pp. 148–161</p>
6	<p>Evaluation: Analysis &amp; Advice—</p> <p><i>As public policy lawyers, what role do you play in communication?</i></p> <p><i>What critical thinking and critical awareness skills do you need to communicate effectively?</i></p> <p><i>What is policy discourse and how is it shaped?</i></p> <p><i>How does critical thinking interact with perception?</i></p>	<p>Smith pp. 62–87; Appendix B</p>
7	<p>Knowing the Record—</p> <p><i>What is the “record” with respect to public policy?</i></p> <p><i>Who creates “the record”?</i></p> <p><i>Why is good public policy and communication thereof formed by “knowing the record”?</i></p> <p><i>How does your understanding of statutory interpretation impact your knowledge of the record and its use in policy formation?</i></p>	<p>Smith pp. 88–107</p>

8	<p>Position Papers: Knowing &amp; Articulating the Issues—</p> <p><i>What is a position paper?</i></p> <p><i>What is the <u>purpose</u> of a position paper?</i></p> <p><i>What considerations go into the drafting of a position paper?</i></p> <p><i>What types of arguments go into a position paper?</i></p> <p><i>How do position papers incorporate skills learned throughout the legal writing curriculum?</i></p> <p><i>Are position papers the same as “white papers” and reports? If not, why not?</i></p> <p><i>How do you craft a “white paper”?</i></p>	Smith pp.108–120
9 & 10	<p>Testimony: Preparing Impactful Hearing Testimony—</p> <p><i>What are the purposes served by receiving testimony in a hearing setting?</i></p> <p><i>What are the procedures associated with testifying before a governmental body?</i></p> <p><i>If a body is split among political parties, how does that impact your role as a witness?</i></p> <p><i>As a witness, what types of testimony must be prepared?</i></p> <p><i>How do you prepare yourself or your principal for the Q&amp;A portion of the hearing?</i></p>	Smith pp. 162–183
11	<p>Testimony: Presentations—</p> <p><i>Students will present their oral testimony and we will discuss impact.</i></p>	Have oral testimony and accompanying one-pagers ready at the beginning of class.

12 & 13	<p>The APA &amp; Agency Rulemaking Process—</p> <p><i>What is the APA?</i></p> <p><i>Who/what is covered by the APA's requirements?</i></p> <p><i>How does the APA interact and impact policymaking?</i></p> <p><i>What are the purposes and machinations of the "notice and comment process"?</i></p> <p><i>What types of "comments" can be made to agencies with respect to their rulemaking?</i></p> <p><i>What are the goals of written communication in the APA setting?</i></p>	Smith pp. 184–205
14	You As a Policymaker: Reflections on the Course	Smith Conclusion

### Projects

The various written assignments completed throughout this course follow the material covered in the textbook and result in students having a binder of material that tracks the formation and implementation of public policy. The assignments are frequent, but they are short and designed to track the pace and output expected of most policymaking staff.

**Project due dates are listed below but the professor reserves the right to change assignments and due dates depending on the flow of the course.**

Unless otherwise indicated, all projects will be due via TWEN upload **no later than 10:00 p.m.** on the date assigned.

Project 1:     Overview Memorandum To Supervisor (2 pages)

Students will prepare a concise memorandum to a supervisor about an assigned policy issue that outlines (frames) the issue and explains why implementing policy to address the issue is appro-

priate. This assignment will be accompanied by a “bibliography” of sources cited and a list of follow-up questions you have.<sup>119</sup>

Concepts covered: Framing the Issue  
Identifying the Problem  
Proposing Possible Policy Solution

Date Assigned: September 20, 2016<sup>120</sup>  
Date Due: September 26, 2016

Project 2:     Updated Initial Memorandum (5 pages)

Update of the initial memorandum to supervisor that includes research about the topic, identifies other stakeholders and interest groups, including their positions, identifies next steps in the research process, identifies potential witnesses on the topic, and makes a recommendation about the shape of the proposed policy solution. This project will be accompanied by an email to the supervisor.

Concepts covered: Evaluating the Issue  
Knowing the Record

Date Assigned: October 4, 2016  
Date Due: October 10, 2016

Project 3:     Draft Position Paper (2–3 pages)

Students will prepare a draft position paper based on an assigned issue and facts that demonstrates their ability to identify a problem, synthesize information, and propose a public policy solution in a clear, concise, and cohesive fashion.

Concepts covered: Those from Projects 1 & 2  
Knowing and Articulating the Issues

Date Assigned: October 11, 2016  
Date Due: October 17, 2016

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119. These questions will become part of your next assignment so be sure to hang on to them.

120. Dates are included for the projects listed to give guidance on how long each assignment is expected to take. Generally, students received a new assignment every other week during the course.

Project 4:     Note Taking and Hearing Memo to Supervisor  
                  (no page limit)

Students will watch a legislative hearing of their choice taking notes on what they see, including paying attention to all aspects of the hearing from opening statement to witness responses in Q&A and prepare a hearing summary for their supervisor on the hearing based on the notes taken (notes will also be submitted). This project will be accompanied by an email to the supervisor.

Concepts covered: How to Listen  
                          How to Read Body Language  
                          Understanding the Format and Formalities  
                          of Legislative & Rulemaking Hearings

Date Assigned:     October 18, 2016

Date Due:           October 24, 2016

Project 5:     “One Pager” & Hearing Testimony—Preparation for  
                  a Hearing (recommended 5 pages for Oral State-  
                  ment; all caps/double-spaced! PLUS YOUR ONE-  
                  PAGER)

Students will prepare a written oral statement that properly—and with impact—summarizes what would be included in full written hearing testimony. In addition, students will prepare “one-pagers” focused on their topic that further summarize the positions and points they wish to make on behalf of their client. **Students may be asked to present their oral statements and/or share their one-pagers in class.**

Concepts covered: Communication/Persuasion  
                          Preparing Impactful Testimony

Date Assigned:     October 18, 2016

Date Due:           November 1, 2016

\* This project will be due in hard copy at the beginning of class\*



Project 6: Rulemaking Comment (10–15 pages)

Students will prepare a comment on a rule that demonstrates their understanding of the rulemaking process and the role of public comments in that process.

Concepts covered: Understanding the APA  
Communicating Effectively in a Rulemaking  
Setting

Date Assigned: November 22, 2016

Date Due: Last Day of Finals 2016