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Bridging the Gap: Transitioning Law School Legal Writing Skills to Practicing Law

Jason Dykstra

A couple of years ago, a student returned from a summer internship with a small firm and immediately bee lined for my office. The senior partner overseeing the student's work did not like his law school style of legal writing. I explained that law school legal writing classes focus on teaching the critical analysis skills needed to successfully practice law. Stylistically, however, law school legal writing differs somewhat from writing in practice. The student and I discussed a few tweaks to his legal writing to make it practice ready.

This article follows up on our conversation. It is designed to help transition the legal writing skills honed in law school to the practice of Law.

First, let's discuss organization

Whether in law school or the practice, good legal writing is clear, concise, and engaging. In organizing legal arguments, good legal writers remain mindful of their audience. In practice, busy supervising partners, judges, and law clerks prefer concise and clear legal writing.¹

Typically, the legal analysis of an issue is discussed using a framework comprised of four basic components:

1. Either a conclusion or a statement of the legal issue,
2. An explanation of the applicable law,
3. An application of the law to the facts of your case, and
4. A conclusion.²

Over time, this framework has proven an effective structure for legal analysis.³



In law school, most students learn to organize discussions by using some variation of this format. Usually, students learn a mnemonic to facilitate remembering this structure. These mnemonics include the familiar IRAC formula (Issue-Rule-Application-Conclusion), the newer CREAC format (Conclusion-Rule-Explanation-Application-Conclusion), and veritable alphabet soup of similar legal analysis paradigms.⁴ Mostly, these formats prove functionally equivalent.

However, the CREAC and IRAC formats differ in one critical component, the initial conclusion. By placing a premium on "issue-spotting," the IRAC formula works great for test taking.⁵ However, the IRAC format deprives the reader of an up-front summary of the discussion that follows. As such, the IRAC format tends to inhibit effective interoffice memo and brief writing.⁶

In contrast, the CREAC format begins with an initial conclusion that predicts the outcome of the

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issue. This conclusion orients the reader by both foreshadowing the following discussion and by illuminating the relevance of particular details that follow.⁷ As such, an initial conclusion can prove more beneficial than a general statement of the issue.⁸ In transitioning law school legal writing to the practice, consider including your conclusions up front. For concise arguments, a conclusion embedded in a point heading may suffice.

But skilled legal writers adapt the organization of their briefing

to fit the legal issues. For example, a fraud claim requires establishing nine elements in Idaho.⁹ Briefing a motion on a fraud claim might prove unwieldy with either a large explanation discussing all nine elements or nine separate CREACs for each element.

Instead, the writer might adapt the CREAC format. The discussion still commences with an initial Conclusion, orienting the reader and predicting the outcome of the fraud issue. Next, the analysis could include a legal Rule that synthesizes the Idaho law governing fraud and introduces the elements. Thereafter, each of the nine elements could be concisely addressed with a separate Explanation of the relevant legal standard and an Application applying that standard. Effectively, the organization of the argument might be described as a “CREAEAEAEAEAEAEAEAEAC” format.

Likewise, a very concise legal issue may not warrant a full CREAC analysis. Thus, skilled legal writers tailor the organizational format to facilitate concise and clear legal writing.

Next let's discuss handling precedent

Legal writing in law school places a heavy dependence on using case illustrations to explain the law pertaining to each issue. A case illustration consists of a detailed explanation of a prior judicial decision. Most case illustrations include a short statement of the legally relevant “trigger facts” that proved key to the holding in the prior case.¹⁰ Case illustrations also include the court's holding and reasoning.¹¹

Case illustrations provide a great training ground for law students. Drafting case illustrations recursively reinforces some of the first skills learned in law school, the ability to read legal opinions and to paraphrase the key material.

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However, case illustrations tend to be less valued in the practice. For example, one student interning at a law firm recently approached me befuddled as to why a supervising attorney continually axed case illustrations from memos and draft briefs. In short, I suspect efficiency might provide the best answer.

Good legal writing reflects the concise and clear writing style preferred by attorneys, judges, and law clerks. Simply, not every explanation of a legal issue needs multiple supporting case illustrations.¹² When the applicable law is clear-cut, no case illustration is really needed.¹³ For example, a description of the standard applicable to motions for summary judgment can be distilled into a rule in a paragraph or two. This well-established standard does not need further explanation with case illustrations. Instead, the standard can be efficiently explained by a rule supported with legal citations.

Likewise, another primary purpose served by case illustrations is to prove that the law really is as described by the writer.¹⁴ However, in practice, a lawyer is ethically obligated to not knowingly make any false statements of fact or law to any tribunal.¹⁵ As such, a legal citation bolstered by the lawyer's professional duty of candor toward

the tribunal supplies adequate proof that the rule is as described. The legal citation provides the reader with the ability to review the authority. And responsive briefing and oral argument provide ample opportunity to rebut any liberties taken in briefing.

So, when should the legal writer use case illustrations in memos or briefs? Whenever the utility exceeds the required real estate. Like all choices in legal writing, the writer should remain mindful of the preferences of the audience. Two common scenarios arise in briefing where a case illustration can prove particularly effective. These scenarios exist at opposite ends of the precedent spectrum.

First, when mandatory authority exists from nearly factually identical precedent. Here, the case illustration provides the perfect vehicle to remind the court of the existing precedent, the spot-on factual similarities, and the underlying reasoning that compels reaching the same conclusion.

Second, when the issue proves novel in the applicable jurisdiction. When the legal writer asks the court to determine the undecided, analogous case illustrations from other jurisdictions can help persuade the Court to reach a similar decision.

In the middle of the precedent spectrum, between mandatory authority and the unprecedented, consider bolstering your legal analysis with parentheticals.

Parentheticals consist of additional text enclosed in parentheses that follows your citation. For example: *Kennedy v. Collagen Corp.*, 161 F.3d 1226, 1230-31 (9th Cir. 1998) (noting that faults in an expert’s specific methodology go to the weight afforded the testimony rather than its admissibility).

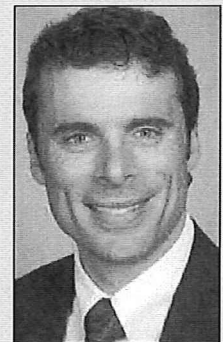
The participle parenthetical beginning with a gerund (an “-ing” word) such as “holding” can work great to concisely explain relatively straightforward cases. Also, as part of a string cite, parentheticals can work effectively to demonstrate that the law is well-settled. Last, parentheticals can effectively integrate persuasive, pithy quotes from cases that don’t warrant a more detailed discussion.

So, with a few adaptations, the legal writing skills honed in law school can be refined for the practice.

Endnotes

1. Kristen K. Robbins, *The Inside Scoop: What Federal Judges Really Think About the Way Lawyers Write*, 8 *Legal Writing: J. Legal Writing Inst.* 257, 278-79 (2002).
2. Christine Coughlin, Joan Malmud Rocklin, and Sandy Patrick, *A Lawyer Writes, a Practical Guide to Legal Analysis*, 81 (2013).
3. *Id.* at 82.
4. CRuPAC, CREXAC, CRAC, IRREAC, and many more.
5. Bryan A. Garner, *Garner on Language and Writing* 402 (2009).
6. *Id.*
7. Christine Coughlin, Joan Malmud Rocklin, and Sandy Patrick, *A Lawyer Writes, a Practical Guide to Legal Analysis*, 81 (2013).
8. *Id.*
9. *Trees v. Kersey*, 138 Idaho 3, 10, 56 P.3d 765, 772 (2002).
10. Christine Coughlin et al, *supra*, at 105.
11. *Id.* at 105-107.
12. *Id.* at 109.
13. *Id.*
14. *Id.* at 110.
15. Idaho Rules of Prof’l Conduct R. 3.3(a) (2014).

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