

## IRAC! IRAC! IRAC!: HOW TO BRIEF ANY LEGAL ISSUE

LAWRENCE J. TRAUTMAN\*  
CATHY L. TAYLOR\*\*  
JANET FORD\*\*\*  
LORA J. KORETZ\*\*\*\*  
ANTHONY L. MCMULLEN\*\*\*\*\*  
ERIN ISOM\*\*\*\*\*

*“Language is the central tool of our trade. You know, when we’re looking at a statute, trying to figure out what it means, we’re relying on the language. When we’re construing the Constitution, we’re looking at words. Those are the building blocks of the law. And so if we’re not fastidious with the language . . . it dilutes the effectiveness and clarity of the law.”*

Chief Justice John G. Roberts Jr.<sup>1</sup>

---

\* BA, The American University; MBA, The George Washington University; J.D., Oklahoma City University School of Law. Mr. Trautman is Associate Professor of Business Law and Ethics at Prairie View A&M University.

\*\* BA, Wesleyan College; JD, University of Georgia School of Law. She currently is an Online Academic Director at Park University where she teaches Business Law and Employment Law. She previously has taught Individual Rights online at Western Carolina University. She is also a Quality Matters Peer Reviewer.

\*\*\* BM, Furman University; JD, University of South Carolina School of Law. Ms. Ford is Assistant Professor of Business Law at Western Carolina University.

\*\*\*\* BS, Western New England College, JD, Suffolk University Law School, MBA, W. P. Carey School of Business at Arizona State University. Ms. Koretz is Clinical Associate Professor at W. P. Carey School of Business at Arizona State University.

\*\*\*\*\* BA, University of Arkansas; JD, University of Arkansas School of Law. Mr. McMullen is an Associate Professor of Business Law at the University of Central Arkansas.

\*\*\*\*\* BA, Prairie View A&M University; JD, Texas Southern University Thurgood Marshall School of Law. Ms. Isom is an Adjunct Instructor at Prairie View A&M University where she teaches Business Law.

The authors wish to extend particular thanks to the following for their assistance in the research and preparation of this article: Lois Blyden; Debra Burke; Regina Glover; Savannah Koehler; Sebastien LaJeunesse; Ryan McClung; Peter C. Ormerod; and Hayley Twing. All errors and omissions are our own.

<sup>1</sup> Bryan A. Garner, Interview of Chief Justice John G. Roberts Jr. (Mar. 2, 2007), 13 SCRIBES J. LEGAL WRITING 5 (2010).

## I. OVERVIEW

To date, there have been no births reported of individuals who innately know how to eloquently analyze and summarize legal issues, including a business law or Supreme Court opinion. Since it appears everyone will have a first attempt at this task, some suggestions offered here will likely prove helpful. The purpose of this short essay is to provide introductory guidance to anyone, including busy students of business or constitutional law,<sup>2</sup> about how to brief any legal opinion. Law professors Strong and Desnoyer have stated that the most difficult thing about the study of law “is learning how to read cases and statutes and finding a way to organize the materials into a workable format.”<sup>3</sup> Our goal is to convey these *basic* analytical and briefing concepts in a format readable within 20 minutes of diligent effort. Ample additional resources are presented in our footnotes for those desiring a more robust discussion.<sup>4</sup>

### A. Initial Considerations

Both students and the public at large will be better citizens if they have a deeper understanding of the scope and application of legal opinions. They are often tempted to look up a legal case using a search engine and select an article from one of their favorite media sources for an analysis of the ruling, rather than go to the original source of that information, which is usually a lengthy and complicated legal opinion, in order to analyze it for themselves. However, as legal professionals, we often observe that the media incorrectly reports the results of legal cases because they will quote the *dicta*, rather than the rule of law. Thus, those who retrieve information from secondary sources will often receive a slanted interpretation or completely false understanding of the rule of law from a case.

---

<sup>2</sup> Constitutional law students could include law students, legal studies majors, students in introductory legal studies classes, criminal justice majors, and business law students who are briefing Supreme Court case synopses in class; thus, the authors have included material useful to all types of potential students and their professors in the footnotes. The IRAC method for briefing Supreme Court cases could also be added to curriculum for observing Constitution Week (Sept. 17-23), an annual commemoration and celebration established by the Daughters of the American Revolution in 1956. *See* Constitution Week, <https://www.dar.org/national-society/education/constitution-week>.

<sup>3</sup> *See* S.I. STRONG & BRAD DESNOYER, HOW TO WRITE LAW EXAMS IRAC PERFECTED, IN HOW TO WRITE LAW EXAMS: IRAC PERFECTED (West Academic Publishing (2016), <http://ssrn.com/abstract=2685893>).

<sup>4</sup> Textbooks will often include a discussion of how to brief a case. *See, e.g.,* JANE MALLOR, ET. AL., BUSINESS LAW: THE ETHICAL, GLOBAL, AND E-COMMERCE ENVIRONMENT 22-23 (16th ed. 2016).

Often, students are given instructions about how to brief a case, but some instructions are better than others. In this article, we are providing a detailed roadmap to guide students and others in their quest to analyze legal opinions. Usually, students are able to understand who wins and who loses a legal case, but they ordinarily do not understand the reason that the prevailing party has won and they are often unable to articulate the part of the ruling that will be used as precedent by future courts. If someone has little or no guidance about how to analyze a legal opinion, he or she will more likely than not take shortcuts and retrieve faulty information from secondary sources<sup>5</sup>.

The study of business law will often require students to determine what they need to know about a legal case that has been assigned to them. Undergraduates will just be introduced to the concepts of *stare decisis* and the dicta, but they often have difficulty understanding how to distinguish between them and to identify the most important legal principles to take away from a case. International students have a greater challenge in this endeavor because they may have difficulty with reading comprehension and a lack of familiarity with some of the fundamental concepts that many domestic students have absorbed in their earlier education.

Constitutional law is not just a foundational course in first-year law school curriculum; it is often taught at undergraduate schools and as part of a liberal studies, business or political science offering. When taught at the undergraduate level, constitutional law may prove particularly challenging for students with less experience analyzing the law than 1Ls who have self-selected for the daunting full-time study of law. Since second grade, when asked to write an essay, many undergraduate students have simply been writing their opinion, hopefully with a few convenient facts sprinkled throughout. Legal analysis is different. Each word and punctuation mark can have profound consequences – including whether someone remains in prison. Herein lies the challenge – to address the issue(s), rules, application of the law to a clear statement of the issue, and to find the succinct conclusion to the case. The goal when writing a legal analysis is to apply the legal principle in a persuasive way to the issue under review.

### B. *Arrangement of This Article*

Our article proceeds as follows. First, we discuss the importance of good legal analysis and writing to our system of justice and how it is widely observed that too often lawyers do not write well. Second, we focus on the

---

<sup>5</sup> A media bias chart such as <https://www.allsides.com/media-bias/media-bias-chart> illustrates the bias in reporting by major media outlets.

need for good analytical and organizational writing skills by briefly discussing the many paradigms widely taught to assist students and practitioners to organize their thoughts and present their legal analysis. For purposes of this brief essay we have chosen the acronym IRAC, where: I=ISSUE; R=RULE; A=APPLICATION; and C=CONCLUSION. Each of these IRAC component parts is then explained. Next, a few words about legal ethics and plagiarism are offered. And finally, we conclude.

### *C. 20 Minutes or Less?*

Time is a conundrum for us all, particularly for those attempting to understand legal thought and writing for the first time.<sup>6</sup> Chief Justice John Roberts contends:

I think you develop a lot as a writer the more you read. And so whenever I was having a lot of time to read, I think I would have improved a good bit as a writer. I read a lot, as other people do, of course, in high school and college. And the interesting thing is, I think people lose a lot of writing ability when they get to law school because you tend to read a lot of stuff that isn't that well written. And you tend to stop reading other stuff that is well written because you don't have time. You're focused on some badly written cases from whenever or some badly written laws, first of all, and you're not reading anything good. So you tend to start writing not as well as you might have earlier. Maybe law students

---

<sup>6</sup> A legal dictionary is highly suggested. Either printed versions or online versions are available to include applications for mobile devices. *See, e.g., FT Black's Law Dictionary, 2<sup>nd</sup> Ed.*, <http://thelawdictionary.org/blacks-law-dictionary-iphone-app/>. A legal dictionary app is also available at [http://www.thelaw.com/\\_](http://www.thelaw.com/_) Additionally, a plethora of excellent resources for new constitutional law students are available online. *See, e.g.* The Oyez Project, [www.oyez.org](http://www.oyez.org); Supreme Court of the United States Blog, <http://www.scotusblog.com/>; Supreme Court Landmarks, <http://www.uscourts.gov/about-federal-courts/educational-resources/supreme-court-landmarks>; Landmark Cases of the U.S. Supreme Court, <http://landmarkcases.org/en/landmark/home>; How the [Supreme] Court Works, [http://supremecourthistory.org/htcw\\_home.html](http://supremecourthistory.org/htcw_home.html); Supreme Court Case Studies Alphabetically, [http://www.streetlaw.org/en/Page/40/Supreme\\_Court\\_Case\\_Studies\\_Alphabetically](http://www.streetlaw.org/en/Page/40/Supreme_Court_Case_Studies_Alphabetically); Supreme Court Cases by Topic, [http://www.streetlaw.org/en/Page/41/Supreme\\_Court\\_Case\\_Studies\\_By\\_Topic](http://www.streetlaw.org/en/Page/41/Supreme_Court_Case_Studies_By_Topic); First Amendment Center, <http://www.firstamendmentcenter.org>; Newseum Institute, <http://www.newseuminstitute.org/>; Legal Information Institute (Supreme Court), <https://www.law.cornell.edu/supremecourt/text/home>, Justia Supreme Court Center, <https://supreme.justia.com/>, and Constitutional Law Commons, <http://network.bepress.com/law/constitutional-law/>.

ought to make sure they have time to read good things apart from the law throughout law school.<sup>7</sup>

Please don't be misled. We are not asserting that skillful legal analysis and writing is achievable in 20 minutes or less. We do believe, however, that presentation of a roadmap that provides a basic bare-bones approach to the analysis of legal opinions, including those of the Supreme Court has value. This modest essay is the functional equivalent of training wheels for the beginning cyclist. Truly skillful legal analysis and writing skills will require many years of hard work and practice.

## II. PROFESSIONAL SUCCESS REQUIRES GOOD LEGAL ANALYSIS AND WRITING

The American Bar Association states that among the important skills that lawyers need to address legal problems<sup>8</sup> include the "...analysis of precedent, the evaluation of evidence and legal drafting..." While highly developed communication skills contribute to success in all professions – research, analysis, and writing skills are likely the foundation for a successful career in either business or law. Clear and concise legal writing is imperative for our legal system to optimally function. As observed by Chief Justice Roberts:

[Supreme Court] opinions are going to be used for lawyers, for other judges – to tell them what the law is. It's an explanation of what the law is. And just like a judge doesn't want to expend all his or her energy trying to figure out what the lawyer is trying to say in a badly written brief, you don't want a trial judge to miss the point of an opinion or to not understand it because it was poorly written. You certainly don't want lawyers, if they are trying to advise clients on how to conform to the law or what the law is . . . you want them to be able to look at an opinion and leave it with some understanding and not just more confusion. . . . We pick up the books in our chambers, and you get a case from 1872 or whatever it is, and you want to read it and understand what their view of the law was and what the precedent means. And if it is poorly written, sometimes you just kind of throw your hands up and look for something else. That's not good.<sup>9</sup>

---

<sup>7</sup> See Garner, *supra* note 1, at 10.

<sup>8</sup> Model Rules of Professional Conduct Rule 1.1, Comment 2.

<sup>9</sup> See Garner, *supra* note 1, at 8.

While there is widespread agreement that “good research and writing skills are vital to the practice of law, . . . surprisingly, there is [also] widespread agreement that new lawyers do not write well.”<sup>10</sup> Indeed, “writing skills do not get the recognition, priority, and resources they deserve even though they permeate the daily life of lawyers in every facet of the legal profession.”<sup>11</sup> In discussing one component of effective writing, proper word usage, Chief Justice John Roberts has observed:

I think it’s vitally important – whether it’s a lawyer arguing a case and trying to explain his position, whether it’s a legislator writing a law, whether it’s a judge trying to construe it. At every stage, the more careful they are with their language, I think, the better job they’re going to do in capturing in those words exactly what they want the law to do; in persuading a judge how to interpret it; and as a judge, in giving a good, clear explanation of what the law is.<sup>12</sup>

### III. THE CHALLENGE OF LEGAL WRITING AND ANALYSIS

*“I think a judge learns more about a case if he has to put his thoughts down on paper. It helps you think through a case, and when you write it out yourself, you often learn things about the case that you hadn’t realized. It’s part of the learning process and decisional process that I think is really quite important.”*

Justice John Paul Stevens<sup>13</sup>

Effective organization of a writer’s thoughts is essential to successful communication. This is particularly true in the case of analysis and the written summary of legal reasoning. The science of “cognitive psychology has taught us that the best students and, for that matter, the best experts, are those who master the subsidiary skills of analysis.”<sup>14</sup> Teaching legal analysis led Professor Ann Piccard to observe how “first-year legal writing classes

---

<sup>10</sup> See Susan Duncan & David T. Ritchie, *How Judges, Practitioners, and Legal Writing Teachers Assess the Writing Skills of New Law Graduates: A Comparative Study*, 53 J. LEG. EDUC. 80 (2003); see also Leah M. Christensen, *Legal Reading and Success in Law School: An Empirical Study*, 30 SEATTLE U. L. REV. 603 (2007).

<sup>11</sup> See Kathleen Elliott Vinson, *Improving Legal Writing: A Life-Long Learning Process and Continuing Professional Challenge*, 21 TOURO L. REV. 517 (2005).

<sup>12</sup> See Garner, *supra* note 1, at 5.

<sup>13</sup> See Garner, *supra* note 1, at 42.

<sup>14</sup> See Nelson P. Miller & Bradley J. Charles, *Meeting the Carnegie Report’s Challenge to Make Legal Analysis Explicit – Subsidiary Skills to the IRAC Framework*, 59 J. LEG. EDUC. 378 (2009), citing PAUL MAHARG, *TRANSFORMING LEGAL EDUCATION: LEARNING AND TEACHING LAW IN THE EARLY TWENTY-FIRST CENTURY* 5 (Ashgate, 2007).

may stress the importance of logic almost to the exclusion of anything else: the organizational scheme has to be logical or the written document makes no sense to its intended audience . . . [and] we expect to see analogical reasoning demonstrated in a prescribed fashion.”<sup>15</sup>

Legal writing professors Nancy Schultz and Louis Sirico observe that, “the word ‘brief’ has two meanings in law. A brief is a written argument that an attorney submits to a court deciding a case. A brief is also a summary of a court opinion.”<sup>16</sup> Our concern in this essay is with this latter type of brief. By college, students have been taking notes in high school and college for years. Briefing a legal opinion is just “a highly structured method of taking notes. It requires you to identify various parts of a case and summarize them.”<sup>17</sup> The purpose of briefing a case is twofold. First, the process of briefing a court opinion assists a student in “focus[ing] on the important aspects of the case. A court opinion may ramble on page after page. Your brief, however, will be no longer than one or two pages. Briefing forces you to get to the heart of the case to grapple with the essentials.”<sup>18</sup> The second benefit from briefing a case is that it “helps you prepare for class and serves as a source of reference during class.”<sup>19</sup> For both law students and attorneys in practice, this approach to briefing should ensure a better organization of thoughts for school exams and actual legal documents.

### A. *Anatomy of a Legal Opinion*

A legal opinion is an official record of the key facts, application of relevant law, and ruling of a lawsuit. Law professor Orin Kerr states that, “the opinion explains what the case is about, discusses the relevant legal principles, and then applies the law to the facts to reach a ruling in favor of one side and against the other.”<sup>20</sup> Benefiting from “hundreds of years of history and practice,” today’s modern judicial opinions “usually follow a simple and predictable formula.”<sup>21</sup> Composite parts, soon to be explained more fully, include: the caption, case citation, listing of the author of the

---

<sup>15</sup> See Ann Piccard, *Teaching to Different Levels of Experience: What I Learned from Working with Experienced Writers from Different Fields*, 17 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 115, (Spring 2009), <http://ssrn.com/abstract=1424471>.

<sup>16</sup> See Nancy L. Schultz & Louis J. Sirico, LEGAL WRITING AND OTHER LAWYERING SKILLS 29 (Wolters Kluwer 2010).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Orin S. Kerr, *How to Read a Legal Opinion*, 11 GREEN BAG 2d 51 (2007).

<sup>21</sup> *Id.* at 51.

opinion, important facts of the case, statement of applicable law, and opinions (both concurring and dissenting).<sup>22</sup>

Professor Tracy L. Turner observes that, “effective organization is simultaneously one of the most elusive skills for legal writers and one of the skills judges most wish lawyers would master.”<sup>23</sup> Chief Justice Roberts tells the following story about how he writes a legal brief:

[I]n general I would surround myself with all the raw materials – the record in the case, the important precedents, obviously, the statute, the regulations – and put it all there. And I would tend to try to write up a little outline of thoughts. Usually, I try to do it on a single piece of paper and then just try to move them around a little bit and see what seemed to fit. And at the end of a couple of days, maybe even longer, I’d have this densely packed piece of paper with arrows and X’s out and boxes moved. At one point, ideally, it kind of crystallizes to – this is the right organization. . . . Nobody else could look at this piece of paper and have the foggiest idea what it meant.<sup>24</sup>

In essence, “legal researchers routinely brief cases by reducing the text of the opinions to their essential elements.”<sup>25</sup> Professor Turner’s “review of textbooks and articles on organizational structure found a broad consensus on four core principles: rule-centered analysis, separation of analysis by issue, synthesis of case law, and unity.”<sup>26</sup> Many acronyms have been offered in legal writing textbooks and journal articles about legal writing as a paradigm for students to use to organize their thoughts and present their legal analysis.<sup>27</sup> One prominent study that reviewed twenty-five textbooks and

<sup>22</sup> *Id.* at 52-54.

<sup>23</sup> See Tracy L. Turner, *Finding Consensus in Legal Writing Discourse Regarding Organizational Structure: A Review and Analysis of the Use of IRAC and Its Progenies*, 9 L. COMM. & RHETORIC: JALWD (2012), citing Amy Vorenberg & Margaret Sova McCabe, *Practice Writing: Responding to the Needs of the Bench and Bar in First-Year Writing Programs*, 2 PHOENIX L. REV. 1, 9 (2009) (identifying organization as the one of the three problems in legal writing most commonly identified in the author’s survey of law firms, judges, and judicial clerks), <http://ssrn.com/abstract=2151615>.

<sup>24</sup> See Garner, *supra* note 1, at 14-15.

<sup>25</sup> See FRANK B. CROSS & ROGER LEROY MILLER, *THE LEGAL ENVIRONMENT OF BUSINESS: TEXT AND CASES*, 21 (Cengage Learning, 9<sup>th</sup> ed., 2015).

<sup>26</sup> See Turner, *supra* note 23 at 355.

<sup>27</sup> See Turner, *supra* note 23, citing Mary Garvey Algero, *IRAC – A Desirable Tool if Used with Care*, 10 THE SECOND DRAFT (newsltr. of the Leg. Writing Inst.) 3 (Nov. 1995); Mary Beth Beazley, *Desirable! Fire, Flood, Famine & IRAC?*, 10 THE SECOND DRAFT (newsltr. of the Leg. Writing Inst.) 1 (Nov. 1995); Marion W. Benfield, Jr., *IRAC – An Undesirable Formula*, 10 THE SECOND DRAFT (newsltr. of the Leg. Writing Inst.) 16–17 (Nov. 1995); Barbara Blumenfeld, *Why IRAC Should be IGPAC*, 10 THE SECOND DRAFT (newsltr. of the



Leg. Writing Inst.) 3 (Nov. 1995); Charles Calleros, *IRAC: Tentative and Flexible and Therefore Reliable*, 10 THE SECOND DRAFT (newsltr. of the Leg. Writing Inst.) 4 (Nov. 1995); Kim Cauthorn, *Keep on "TRRACing,"* 10 THE SECOND DRAFT (newsltr. of the Leg. Writing Inst.) 4 (Nov. 1995); Kenneth D. Chestek, *The Plot Thickens: The Appellate Brief as Story*, 14 LEG. WRITING 127 (2008); Lurene Contento, *Demystifying IRAC and Its Kin: Giving Students the Basics to Write "Like a Lawyer,"* 21 THE SECOND DRAFT (newsltr. of the Leg. Writing Inst.) 8 (Dec. 2006); H. Russell Cort, *A Nest of IRACs*, 10 THE SECOND DRAFT (newsltr. of the Leg. Writing Inst.) 5 (Nov. 1995); Richard W. Creswell, *Putting the Monolithic Template in Context*, 10 THE SECOND DRAFT (newsltr. of the Leg. Writing Inst.) 17 (Nov. 1995); Cara Cunningham & Michelle Streicher, *The Methodology of Persuasion: A Process-Based Approach to Persuasive Writing*, 13 LEG. WRITING 159 (2007); Jo Anne Durako, *Evolution of IRAC: A Useful First Step*, 10 THE SECOND DRAFT (newsltr. of the Leg. Writing Inst.) 6 (Nov. 1995); Linda H. Edwards, *IRAC Format Accomplishes the Limited Purpose It Is Designed to Achieve*, 10 THE SECOND DRAFT (newsltr. of the Leg. Writing Inst.) 7 (Nov. 1995); Toni M. Fine, *Comments on IRAC*, 10 THE SECOND DRAFT (newsltr. of the Leg. Writing Inst.) 7 (Nov. 1995); Jane Kent Gionfriddo, *Dangerous! Our Focus Should Be Analysis, Not Formulas like IRAC*, 10 THE SECOND DRAFT (newsltr. of the Leg. Writing Inst.) 2 (Nov. 1995); Dennis R. Honabach, *"IRAC" or "(Q)FRFR + IRAC"*, 10 THE SECOND DRAFT (newsltr. of the Leg. Writing Inst.) 8 (Nov. 1995); Chris Iijima & Beth Cohen, *Reflections of IRAC*, 10 THE SECOND DRAFT (newsltr. of the Leg. Writing Inst.) 9 (Nov. 1995); M. H. Sam Jacobson, *Learning Styles and Lawyering: Using Learning Theory to Organize Thinking and Writing*, 2 J. ALWD 27, 65–68 (2004); Sam Jacobson, *RAFADC, Not IRAC*, 10 THE SECOND DRAFT (newsltr. of the Leg. Writing Inst.) 9 (Nov. 1995); David J. Jung, *I ♥ IRAC?* 10 THE SECOND DRAFT (newsltr. of the Leg. Writing Inst.) 10 (Nov. 1995); Soma R. Kedia, *Redirecting the Scope of First-Year Writing Courses: Toward a New Paradigm of Teaching Legal Writing*, 87 U. DET. MERCY L. REV. 147, 162–77 (2010); Joseph Kimble, *In Defense of IRAC (as Far as it Goes)*, 10 THE SECOND DRAFT (newsltr. of the Leg. Writing Inst.) 10 (Nov. 1995); Joyce Deatrick Klouda, *Whether or Not to Use IRAC: Can We Drive Without the Rules of the Road?*, 10 THE SECOND DRAFT (newsltr. of the Leg. Writing Inst.) 11 (Nov. 1995); Karen L. Koch, *A Multidisciplinary Comparison of Rules-Driven Writing: Similarities in Legal Writing, Biology Research Articles, and Computer Programming*, 55 J. LEG. EDUC. 234 (2005); Allen Mendenhall, *The Importance of Being Earnest: A Serious Proposal to Modify Legal Research and Writing Departments*, 2007 W. VA. L. REV. 32; Christina Kunz & Deborah Schmedemann, *Our Perspective on IRAC*, 10 THE SECOND DRAFT (newsltr. of the Leg. Writing Inst.) 11 (Nov. 1995); Gerald Lebovits, *Cracking the Code to Writing Legal Arguments: From IRAC to CRARC to Combinations in Between*, 82 N.Y. ST. B.J. 64 (2010); Jeffrey Malkan, *IRAC: A True Story*, 10 THE SECOND DRAFT (newsltr. of the Leg. Writing Inst.) 18 (Nov. 1995); Jeffrey Metzler, *The Importance of IRAC and Legal Writing*, 80 U. DET. MERCY L. REV. 501 (2003); Michael D. Murray, *Communicating Explanatory Synthesis*, 14 PERSPS. 136 (2006); Kathleen Dillon Narko, *TREAC, the New IRAC – Or Why Organization Matters*, 18 CBA REC. 47 (2004); Sally Ann Perring, *In Defense of [F]IRAC*, 10 THE SECOND DRAFT (newsltr. of the Leg. Writing Inst.) 12 (Nov. 1995); Diana Pratt, *IRAC: A Useful Beginning, but Hardly a Panacea*, 10 THE SECOND DRAFT (newsltr. of the Leg. Writing Inst.) 12 (Nov. 1995); Ellen Lewis Rice et al., *IRAC, the Law Student's Friend or Foe: An Informal Perspective*, 10 THE SECOND DRAFT (newsltr. of the Leg. Writing Inst.) 13 (Nov. 1995); Jacquelyn H. Slotkin, *IRAC Response*, 10 THE SECOND DRAFT (newsltr. of the Leg. Writing Inst.) 14 (Nov. 1995); Nancy Soonpaa, *The Continued Vitality of IRAC*, 10 THE SECOND DRAFT (newsltr. of the Leg. Writing Inst.) 15 (Nov. 1995); Nancy P. Spyke, *Thoughts on the Use of IRAC in Teaching Analysis*, 10 THE SECOND DRAFT (newsltr. of the Leg. Writing Inst.) 15 (Nov. 1995); Hollee S. Temple, *Using Formulas to Help Students Master the "R" and "A" of IRAC*, 14 PERSPS. 129 (2006); Christine M. Venter, *Analyze This: Using Taxonomies to "Scaffold" Students' Legal*

numerous journal articles on the topic of legal writing found the use of twenty-one different acronyms for organizational structure.<sup>28</sup>

Some of the more often used acronyms include: CREAC;<sup>29</sup> CRuPAC;<sup>30</sup> IRAC;<sup>31</sup> RIRAC;<sup>32</sup> and TREAT.<sup>33</sup> While many approaches are offered by legal writing scholars, it's probably safe to assume that any one of these is better for beginning students of the law than no formal or logical structure at all. Studies show that, "most law schools teach the IRAC method in the first term of law school . . . [which is] the best time to start as studies show that early mastery of learning (early in a course, early in a curriculum, early in a career) tends to provide greater (and perhaps exponential) benefits."<sup>34</sup> Therefore, for purposes of this short essay, we have chosen as our paradigm the acronym IRAC, among the most commonly taught to first-year legal analysis and writing students.<sup>35</sup>

### B. Paragraph Organization: The Very Basics

As legal writing has developed during the past 150 years, certain conventions have emerged that are expected by judges, consumers of legal

*Thinking and Writing Skills*, 57 MERCER L. REV. 621, 624–26 (2006); Vorenberg & McCabe, supra n. 21; Manning Warren, *IRAC Response*, 10 THE SECOND DRAFT (newsltr. of the Leg. Writing Inst.) 19 (Nov. 1995); Mark E. Wojcik, *The Death of IRAC*, THE SECOND DRAFT (newsltr. of the Leg. Writing Inst.) 16 (Nov. 1995).

<sup>28</sup> See Turner, supra note 23 at 357.

<sup>29</sup> See Diane Kraft, *CREAC in the Real World*, 63 CLEV. ST. L. REV. 567 (2015), <http://ssrn.com/abstract=2534359>.

<sup>30</sup> *Id.*

<sup>31</sup> See S.I. Strong & Brad Desnoyer, *How to Write Law Exams IRAC Perfected* (West Academic Publishing 2016), <http://ssrn.com/abstract=2685893>.

<sup>32</sup> See Harold Anthony Lloyd, *Good Legal Thought: Forms, Frames, Choices, and Aims*, 41 VT. L. REV. 1 (2016), <http://ssrn.com/abstract=2717628>.

<sup>33</sup> See Michael D. Murray & Christy Hallam DeSanctis, *Organizing Legal Writing: The T-R-E-A-T Method - Explanation and Application Sections* (2015), <http://ssrn.com/abstract=2569837>.

<sup>34</sup> See Nelson P. Miller & Bradley J. Charles, *Meeting the Carnegie Report's Challenge to Make Legal Analysis Explicit – Subsidiary Skills to the IRAC Framework*, 59 J. LEG. EDUC. 192 (2009), citing PAUL MAHARG, *TRANSFORMING LEGAL EDUCATION: LEARNING AND TEACHING LAW IN THE EARLY TWENTY-FIRST CENTURY* 5 (Ashgate, 2007).

<sup>35</sup> Numerous other brief writing guides exist online for the novice brief writer. See Michelle Fabio, *How to Write a Case Brief* (2016), <http://lawschool.about.com/od/casebriefs/ht/howtocasebriefs.htm>; Christopher Pyle and Katherine Killoran, *How to Brief a Case* (1982, rev. 1999), <http://www.lib.jjay.cuny.edu/research/brief.html>; *How to Brief a Case* (2003); <http://www.lawnerds.com/guide/briefing.html>; and *How to Brief a Case Using the "IRAC" Method*, <http://www.csun.edu/~kkd61657/brief.pdf>. For an array of case study teaching methods, see *Court Case Study Master*, Oyez, Oyez, O Yay!: Civil Resources for Texas Students and Teachers, <https://www.texasbar.com/civics/teacher%20resources/court-case-study-master.pdf>.

scholarship, and law school professors.<sup>36</sup> Professor Tracy L. Turner observes that, “experts on composition have recognized two key principles of paragraph organization: (1) paragraphs should usually begin with a topic sentence that states the point the paragraph will address, and (2) the body of a paragraph should relate to a topic sentence.”<sup>37</sup>

#### IV. BRIEFING FORMAT<sup>38</sup>

After carefully reading the court’s opinion,<sup>39</sup> or even while reading and analyzing the opinion,<sup>40</sup> a student may start to brief the case.<sup>41</sup> A usual place

---

<sup>36</sup> See Tracy L. Turner, *Flexible IRAC: A Best Practices Guide*, 20 J. LEGAL WRITING INS’T. 233 (2015), <http://ssrn.com/abstract=2633667>.

<sup>37</sup> *Id.* at 237.

<sup>38</sup> A pre-class online quiz on the IRAC method and formatting for briefing would be a logical way to introduce flipped content to case brief assignments for constitutional law students. See Tanya M. Marcum & Sandra J. Perry, *Flips and Flops: A New Approach to a Traditional Law Course*, 32 J. LEGAL STUD. EDUC. 255, 267 (2015), where Marcum and Perry suggest online quizzes to be completed before class attendance. Students were allowed to retake the quizzes while quizzes were open but quiz questions would change each time. Quizzes would close prior to class. Marcum and Perry, *supra* note *Id.* at 267 noted, “Quizzes led to individual student accountability for the basic materials in the flipped classroom.” For examples of other content related to the Constitution suitable for a flipped undergraduate law curriculum, see *Bill of Rights Match Game*, Law Related Educational Games, State Bar of Texas, [http://texaslregames.org/games\\_web\\_eng/BOR/billofrights.html](http://texaslregames.org/games_web_eng/BOR/billofrights.html); *Constitution Board Game*, Law Related Educational Games, State Bar of Texas, [http://texaslregames.org/games\\_web\\_eng/crelay/index.html](http://texaslregames.org/games_web_eng/crelay/index.html). An instructional designer may be able to create multimedia content for the IRAC method in a law course using these formats. For an in-depth discussion of the Framers’ intents with regards to the Bill of Rights, see *Congress Creates the Bill of Rights*, National Archives and Records Administration, (2015), <https://www.archives.gov/legislative/resources/bill-of-rights.html>. A free app and eBook created by the Center for Legislative Archives are provided there.

<sup>39</sup> Students can also listen to oral arguments before the U.S. Supreme Court or read the transcripts compliments of The Oyez Project, [www.oyez.org](http://www.oyez.org). A specific example is <https://www.oyez.org/cases/2015/14-1382>. The listener can read the transcript and follow along with the highlighted text. Oral arguments for recent cases are also posted at the U.S. Supreme Court’s website, <https://supremecourt.gov>. The Oyez Project has also created an app with the same content as the website, *OYEZ*, <https://itunes.apple.com/us/app/oyez/id346152567?mt=8>. Adding these activities to a traditional course as required pre-class viewing would be a good way to begin “flipping” the legal classroom and integrating online resources. See Matt Hlinak, *Flipping and Mooving Your Class Or: How I Learned to Stop Worrying and Love the MOOC*, 33 J. LEGAL STUD. EDUC. 23-36 (2016), for other examples of how to flip legal classroom content to include sending students to a Harvard MOOC: Michael Sandel, *Justice*, Harvard University (2011), <http://www.justiceharvard.org/>. The content at Professor Sandel’s MOOC in Episodes 4 and 10 would be especially helpful for constitutional scholars as it pertains to individual rights.

<sup>40</sup> Undergraduate legal texts often contain brief sections of the cases selected by the authors. These case summaries should be sufficient for students to brief the cases presented. If students would like to view the full versions of U.S. Supreme Court cases, they can be found online.

to start is at the top of the page by stating: the full citation of the case to be briefed<sup>42</sup> and by providing a statement of the facts involved in the case.

### A. Citation

Professors Frank Cross and Roger Miller recommend that the case brief contain “the full citation for the case, the date it was decided, and the court that decided it.”<sup>43</sup> Law students will undoubtedly become intimately familiar with the citation formats required by the Bluebook, but undergraduate students need not be concerned with the level of detail the Bluebook requires. The reason for including the court that rendered the decision is so that students will be able to understand whether the decision will be precedent under state law or federal law on the subject. Here are two examples of how we think undergraduate students should cite cases: *Escobedo v. Illinois* (SCOTUS 1964); *Friedman v. Highland Park* (7th Cir. 2015). Both examples follow the same format: the italicized case name appears first, while the deciding court and the year the case was decided appears in a trailing parenthetical.

### B. Statement of Facts

Professors Cross and Miller suggest that the statement of facts section of a case brief should contain, “(a) the reasons for the lawsuit; (b) the identity and arguments of the plaintiff(s) and defendant(s), respectively; and (c) the lower court’s decision—if appropriate.”<sup>44</sup> The first thing a reader will want to know (and a student will want to remember) is: What happened here? Why is there a legal dispute?

---

*See, e.g.*, United States Supreme Court Cases, <http://caselaw.findlaw.com/court/us-supreme-court>.

<sup>41</sup> As noted earlier, many undergraduate law textbooks will include a guide on how to brief a case. *See, e.g.*, JANE MALLOR, ET AL., BUSINESS LAW: THE ETHICAL, GLOBAL, AND E-COMMERCE ENVIRONMENT 22-23 (16th ed. 2016). The Mallor text suggests facts, history, issues, holdings, reasoning, and result as components of an undergraduate level legal brief. *Id.* at 23.

<sup>42</sup> Numerous resources are available online to help undergraduate students with legal citation and understanding legal abbreviations. *See* Citing Legal Materials in APA Style, <https://library.csustan.edu/jbrandt/class/apa-legal.pdf>; A Brief Guide to Legal Citation in APA Style, <http://library.weber.edu/cm/a&h/legalcitations.cfm>; Peter A. Martin, Introduction to Legal Citation (2015), <https://www.law.cornell.edu/citation/>; Diane Marley, Common Legal Abbreviations (2005), <http://www.law.siu.edu/lawlib/guides/abbr.htm>.

<sup>43</sup> *See* CROSS & MILLER, *supra* note 25.

<sup>44</sup> *Id.*

## V. IRAC EXAMINED

The acronym IRAC is a legal analysis and writing paradigm that simply stands for:

- I = ISSUE;
- R = RULE;
- A = APPLICATION; and
- C = CONCLUSION

Below, we have provided a brief description of what each of these sections might contain in the simplest form of this paradigm (IRAC). However, Professor Turner writes, “scholars appear to have a consensus that separate issues and elements should have separate IRAC sequences.”<sup>45</sup> Students will soon discover that, “rarely does a legal analysis revolve around a single major premise. Rather, an effective legal analysis usually requires synthesis of a complex web of pronouncements about the law.”<sup>46</sup> Therefore, after students have become accustomed to framing their thinking and analysis for a single factor case using IRAC; they will soon realize that use of the IRAC organizational paradigm easily adapts itself to describing argument subsections, such as:

Subsection 1:

- I: Issue
- R: Rule for Factor 1:
- A: Application of the rule to the facts of this case
- C: Conclusion

Subsection 2:

- I: Issue
- R: Rule for Factor 2:
- A: Application of the rule to the facts of this case
- C: Conclusion

---

<sup>45</sup> See Turner, *supra* note 36 at 235 (explaining her choice of IRRRAAC rather than IRAC to address the organization of analyses that include multiple rule paragraphs and multiple application paragraphs), <http://ssrn.com/abstract=2633667>.

<sup>46</sup> See Turner, *supra* note 23, at 356.

Subsection 3:

I: Issue

R: Rule for Factor 3:

A: Application of the rule to the facts of this case

C: Conclusion<sup>47</sup>

But for our initial purposes in writing an opinion brief, or elementary legal analysis, simple should suffice.

A. *Issue*

What is the issue? Legal writing professor Bret Rappaport states, “the IRAC formula requires the student who is presented with a problem to identify and find the issue. Why is there a dispute? Is it a breach of contract, personal injury, or maybe a trademark dispute? The formula requires the issue to be reduced to a single sentence.”<sup>48</sup> In reading a U.S. Supreme Court opinion, certain key words such as “*whether*” or “*does*” will tend to signal the issue in the case. For example, in *Escobedo v. Illinois*, Justice Goldberg asks:

*whether*, under the circumstances, the refusal by the police to honor petitioner’s request to consult with his lawyer during the course of an interrogation constitutes a denial of “the Assistance of Counsel” in violation of the Sixth Amendment to the Constitution as ‘made obligatory upon the States by the Fourteenth Amendment,’ and thereby renders inadmissible in a state criminal trial any incriminating statement elicited by the police during the interrogation. . . .<sup>49</sup>

Chief Justice Warren uses the word “does” to signal the issue in *Brown v. Board of Education* when he writes, “does segregation of children in public schools solely on the basis of race, even though the physical facilities and other ‘tangible’ factors may be equal, deprive the children of the minority group of equal educational opportunities?”<sup>50</sup> Particularly for those

---

<sup>47</sup> See Kraft, *supra* note 29, at 6 (for an explanation of the CREAC paradigm when numerous subsections are required).

<sup>48</sup> See Bret Rappaport, *Tapping the Human Adaptive Origins of Storytelling by Requiring Legal Writing Students to Read a Novel in Order to Appreciate How Character, Setting, Plot, Theme, and Tone (CSPTT) are as Important as IRAC*, 25 T.M. COOLEY L. REV. 267, 271 (2008), <http://ssrn.com/abstract=1523517>.

<sup>49</sup> 378 U.S. 478, 479 (1964).

<sup>50</sup> 347 U.S. 483 (1954).

new to the study of law, it will likely prove risky to paraphrase an issue. In legal analysis, every word counts and has meaning. Indeed, many legal arguments will be won or lost depending on interpretation of a single word, or even the position of the word in a sentence. The risk in paraphrasing an issue is that a student's analysis may provide an answer to the wrong question. In addition, students must be careful not to just copy and paste the stated Issue – taking the time necessary to fully comprehend the Issue is important. The Rule Statement is usually achievable within a single paragraph.

### B. Rule

Professor Diane Kraft teaches that, “legal analysis should be fronted with the rule, and the rule must be applied to the facts of the case at hand.”<sup>51</sup> Professors Cross and Miller write that, “A rule of law may be a rule stated by the courts in previous decisions, a state or federal statute, or a state or federal administrative agency regulation.”<sup>52</sup> Supreme Court opinions derive an applicable rule from the Constitution itself,<sup>53</sup> as interpreted through *stare decisis* (what the courts have written previously about the Constitutional issue). For example, the Rule for many cases involving the right to own a gun will be the Second Amendment to the U.S. Constitution: “A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”<sup>54</sup> Just like with an issue, the rule should be stated word-for-word. Other segments of the applicable rule will likely consist of prior Supreme Court opinions about relevant fact patterns.

### C. Application

Rule application answers the question, “how do the rules of law apply to the particular facts and circumstances of this case?”<sup>55</sup> This is the part of the IRAC schematic where students will conduct most of their essay writing. To be effective, the application section should be chock full of reasoning based

---

<sup>51</sup> See Kraft, *supra* note 29, at 6.

<sup>52</sup> See CROSS & MILLER, *supra* note 25, at 10.

<sup>53</sup> Reading the Constitution is highly recommended for better understanding of U.S. Supreme Court cases. See, e.g., an online version of the Constitution <http://www.usconstitution.net/const.pdf>. For an in-depth discussion of the Framers' intent with regards to the Bill of Rights, see, Congress Creates the Bill of Rights, <https://www.archives.gov/legislative/resources/bill-of-rights.html>. A free app and eBook created by the Center for Legislative Archives are provided.

<sup>54</sup> See U.S. CONST. amend. II.

<sup>55</sup> See CROSS & MILLER, *supra* note 25, at 10.

upon actual law (the Constitution, or applicable Supreme Court cases). Looking at Supreme Court opinions will prove instructive at how the Court, when providing application of the law to the case issue, reflects upon their prior decisions. An example of this is found in the opinion written by Chief Justice Roberts in *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, where he writes:

Some of the Court’s leading First Amendment precedents have established the principle that freedom of speech prohibits the government from telling people what they must say. In *West Virginia Bd. of Ed. v. Barnette* (1943), we held unconstitutional a state law requiring schoolchildren to recite the Pledge of Allegiance and to salute the flag. And in *Wooley v. Maynard* (1977), we held unconstitutional another that required New Hampshire motorists to display the state motto – “Live Free or Die” – on their license plates.<sup>56</sup>

#### D. *Writing a Conclusion*

The conclusion will likely be disarmingly obvious and simple.<sup>57</sup> If you are using IRAC to successfully write an essay or legal exam, “usually, the conclusion is evident if the previous three steps [Issue, Rule and Application] have been followed carefully.”<sup>58</sup> Often, but not always, the Court will signal their conclusion in a highly obvious way by the use of signaling words such as “*we conclude*” or “*we hold.*” Chief Justice Warren provides a vivid example of language from the Court’s opinion that signals a conclusion when he writes:

*We conclude* that in the field of public education the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal. Therefore, *we hold* that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. (emphasis added)<sup>59</sup>

---

<sup>56</sup> 547 U.S. 47 (2006).

<sup>57</sup> The conclusion should answer the question(s) raised in the legal issue(s) with a simple yes or no for each issue with additional discussion. The content of the discussion will vary, but the conclusion must directly answer the question(s) raised by the issue(s).

<sup>58</sup> See CROSS & MILLER, *supra* note 25, at 10.

<sup>59</sup> 347 U.S. 483 (1954).



A clear statement of the conclusion will usually begin with either the word “yes” or “no”; then a comma (“,”); followed by a positive restatement of the actual issue. For example, let us again consider *Brown v. Board of Education*, where the issue is, “Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other ‘tangible’ factors may be equal, deprive the children of the minority group of equal educational opportunities?”<sup>60</sup> A clear statement of an essay conclusion written in IRAC format might read, “Yes, segregation of children in public schools solely on the basis of race, even though the physical facilities and other ‘tangible’ factors may be equal, deprive the children of the minority group of equal educational opportunities.” Or, the clear statement of the student’s essay conclusion may read, “No, segregation of children in public schools solely on the basis of race, even though the physical facilities and other ‘tangible’ factors may be equal, *does not* deprive the children of the minority group of equal educational opportunities.” The conclusion should almost always be the last sentence of a student’s written analysis.

## VI. IRAC AND WRITING EXAMS AND ESSAYS

In addition to using IRAC to brief U.S. Supreme Court opinions and other court cases, IRAC provides a useful tool when “the goal is to produce a simple (but not simplistic), well-focused essay that answers the question asked with brevity, precision and power.”<sup>61</sup> This is a skill that can be transferred to other situations as well.

## VII. ETHICS AND PLAGIARISM

Given our desire to reasonably limit this paper to a twenty-minute or less reading threshold, additional comments will be brief and limited to the single topic of ethics<sup>62</sup> and plagiarism.<sup>63</sup>

---

<sup>60</sup> 347 U.S. 483 (1954).

<sup>61</sup> S.I. STRONG, HOW TO WRITE LAW ESSAYS & EXAMS 44 (4<sup>th</sup> ed. Oxford U. Press 2014).

<sup>62</sup> Ethics here refers to academic integrity. See Peter Prescott, Hilary Buttrick, & Deborah Skinner, *A Jury of Their Peers: Turning Academic Dishonesty into Classroom Learning*, 31 J. LEGAL STUD. EDUC. 179-206 (2014), for a discussion of how to encourage students to learn more about what constitutes academic dishonesty and to develop empathy through ethical exercises based on real-life classroom scenarios such as violations of academic integrity policies. Prescott, Buttrick & Skinner quoted a related article, Shelley McGill, *Integrating Academic Integrity Education with the Business Law Course: How and Why?*, 25 J. LEGAL STUD. EDUC. 241, 241 (2008), concerning the importance of “connect[ing] personal student experiences” with course material. Why include this topic as a section? Academic integrity is the cornerstone on which higher education is built, and ethics a cornerstone for the functioning

## A. Ethics

The *Stanford Law Review* observes that, “law reviews have been unique in failing to articulate basic ethics standards. These failures threaten the validity, credibility, prestige and potential of student run law reviews.”<sup>64</sup> Thus, they developed the following originality policy:

(I) Originality Policy: Articles must be the original work of the author or authors identified on the submission, except for material in the public domain or material from other works that are properly cited or included with the permission of the rights owners. The article, in whole or in part, must not have been published before.

of our democratic society. This relationship is described by Camilla Jones Roberts & Shalin Hai-Jew, *Issues of Academic Integrity: An Online Course for Students*, 5 MERLOT J. ONLINE TEACHING & LEARNING 183 (2009), by this quotation: “The issue of academic honesty is a sensitive one for a university because it is so central to the individual learner’s self-identity, the campus’s academic mission, the university’s reputation, and the qualifications it confers.” See Prescott, Buttrick, & Skinner, *supra*, “If students believe that faculty members will look the other way or fail to impose a stiff sanction, students lose respect for the rules” at 186-187. Prescott, Buttrick, & Skinner also noted previous legal scholarship on this issue. See, e.g., Elleta Sangrey Callahan, Terry Morehead Dworkin, & Gisela M. von Dran, *The Impact of Prioritizing Academic Integrity in Business Schools: A Comparative Analysis*, 19 J. LEGAL STUD. EDUC. 187, 190 (2001), where the authors suggest that the faculty taking a “passive” role in enforcing university academic integrity policies “could lead students to the perception that faculty tolerate cheating.” Thus, faculty should take an active role in enforcement lest students perceive that cheating or plagiarism will be ignored. Callahan, Dworkin, and M. von Dran also contended that “most students cheat” at 187 where the most prevalent cheating activities were defined as “giving or receiving assistance during an examination, plagiarism, and unauthorized collaboration.” See Donald L. McCabe & William J. Bowers, *Academic Dishonesty Among Males in College: A Thirty Year Perspective*, 35 J. C. STUDENT DEV. 5, 6 (1994). We include this section in that spirit.

<sup>63</sup> A myriad of resources are available to students and instructors on this subject. See, e.g., Understanding Plagiarism Quiz, <https://www.esc.edu/academic-integrity/plagiarism/student-resources/text-only-plagiarism-quiz/>; How to Recognize Plagiarism: Tutorials and Tests (2016), <https://www.indiana.edu/~academy/firstPrinciples/index.html>; Academic Integrity, <http://www.cmu.edu/teaching/academicintegrity/index.html>; Defending and Avoiding Plagiarism: The WPA Statement on Best Practices (2003), <http://wpacouncil.org/files/wpa-plagiarism-statement.pdf> and Faculty Toolkit on Copyright and Plagiarism (2014), <http://ndscs.nodak.libguides.com/copyright>. For resources designed for international students, see Guide to Advising International Students about Academic Integrity (2012), <https://dus.psu.edu/mentor/2012/03/guide-to-advising-international-students-about-academic-integrity/> and Yingyi Ma, Academic Integrity: A Key Cross-Cultural Issue for Chinese Students Overseas (2013), <http://www.unitedplanet.org/blog/2013/01/17/academic-integrity-a-key-cross-cultural-issue-for-chinese-students-overseas>.

<sup>64</sup> See Article Submissions, Ethics Policy, Stanford Law Review, <https://www.stanfordlawreview.org/submissions/article-submissions/> (last viewed May 30, 2019).

(II) Replication Policy: At a minimum, empirical works must document and archive all datasets so that third parties may replicate the published findings. These datasets will be published on our website. The Law Review will make narrow exceptions on a case-by-case basis, particularly if the datasets involve issues of confidentiality and/or privacy...<sup>65</sup>

### B. Plagiarism

Laura Dickson observes that, “Plagiarism has been described as an epidemic plaguing the nation, but is not a novel concept.”<sup>66</sup> The *Gonzaga Law Review* defines plagiarism as “the act of attributing another’s words or ideas as one’s own.”<sup>67</sup> Bylaws for the *Gonzaga Law Review* state the following:

1. The Review does not have a numerical standard for the number of words that can be used in text without the use of quotation marks.
2. The Review shall look at plagiarism questions on a case-by-case basis, looking at the totality of the circumstances for each occurrence.
3. Safe guidelines suggest quotations around three words lifted directly from a source. However, the more unique a word or phrase is, the greater need to use quotations.
4. When considering whether language should be quoted, the Review considers: (1) is the word or phrase a term-of-art; (2) is the word or phrase unique to the source; and (3) could the word or phrase have been re-written.<sup>68</sup>

---

<sup>65</sup> *Id.*

<sup>66</sup> Laura A. Dickson, Note, *Paradigms of Plagiarism: Fair Use and Plagiarism Detection Software in A.V. ex rel. Vanderhye v. iParadigms, LLC*, 89 N.C. L. REV. ADDENDUM 29 (2011) (Similarly, Slate columnist and University of Missouri adjunct professor Rebecca Schuman’s infamously observed that “Plagiarism is now so commonplace that if we flunked every kid who did it, we’d have a worse attrition rate than a MOOC.”) See *The End of the College Essay* (December 13, 2013),

[http://www.slate.com/articles/life/education/2013/12/college\\_papers\\_students\\_hate\\_writing\\_them\\_professors\\_hate\\_grading\\_them\\_let.html](http://www.slate.com/articles/life/education/2013/12/college_papers_students_hate_writing_them_professors_hate_grading_them_let.html).

<sup>67</sup> *Gonzaga Law Review*, Bylaws, Article V.§1 (A) Plagiarism Defined 24 (June 11, 2013), <http://www.law.gonzaga.edu/law-review/files/2010/04/GONZAGA-LAW-REVIEW-BYLAWS-pdf.pdf>.

<sup>68</sup> *Id.*

Laura Dickson states that, “Despite plagiarism’s historical presence, it is a real problem in academic institutions that threatens, not only the original work of those who are victimized by this type of intellectual thievery, but also jeopardizes the continued intellectual growth of society.”<sup>69</sup> Failing to follow the letter and spirit of the guidelines described in the paragraphs above could easily damage someone’s reputation and possibly his or her career, so we advise the reader to err on the side of caution.

## VIII. PRACTICE. PRACTICE, AND PRACTICE

As we noted at the beginning of this brief essay, we don’t believe that truly skillful legal analysis and writing may be achieved within 20 minutes or less. Truly skillful legal analysis and writing skills will require many years of hard work and practice. But we do believe that the analytical paradigm (IRAC) presented above provides a highly beneficial basic approach to analysis and writing.

### Teaching Note

We recommend incorporating the IRAC method into a basic legal environment of business course from day one. This can provide a good introduction to the course as well as provide an alternative to having a “syllabus day.” It is particularly helpful if a professor either uses discussion as a primary method of teaching or has essay questions on exams, as it informs the students of what ought to be expected of them when developing responses to hypotheticals presented in class.

For face to face courses, Professor McMullen begins by presenting the students a hypothetical situation and asks students to respond to the question as if they were responding to the question on an exam. The hypothetical should not be too complex, but at the same time, it is acceptable if it contains a legal issue for which students may not be familiar. It might also be helpful to use a scenario in which a student could picture himself/herself involved. First-day scenarios that Professor McMullen have used in past semesters include an automobile accident where the parties attempt to settle it on the

---

<sup>69</sup> See Lawrence J. Trautman, *The Value of Legal Writing, Law Review, and Publication*, 51 IND. L. REV. 693 (2018), <http://ssrn.com/abstract=2501834>, citing Laura A. Dickson, Note, *Paradigms of Plagiarism: Fair Use and Plagiarism Detection Software in A.V. ex rel. Vanderhye v. iParadigms, LLC*, 89 N.C. L. REV. ADDENDUM 29 (2011); see also Kim D. Chanbonpin, *Legal Writing, the Remix: Plagiarism and Hip Hop Ethics*, 63 MERCER L. REV. 597 (2012); Gerald Lebovits, *Legal Writing Ethics – Part I*, 77 N.Y. ST. BAR J. 64 (2005); Judith D. Fischer, *Avoiding Plagiarism in Legal Documents*, KY. BENCH & BAR 68 (2006), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=992332](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=992332).

spot and an insurance contract where the insured is incorrectly told that certain property damage is covered by a policy.

Students are instructed to simply try their best when responding to the question. Once students have had some time with the question, Professor McMullen asks students to compare their responses to the responses of students near them. (Professor McMullen regularly encourages students to share their thoughts in small groups before having a full class discussion. Therefore, this activity also serves to get students accustomed to the flow of the course from the first day.) Once it appears that the students have had a chance to write a response, volunteers are sought to share their responses, and Professor McMullen asks the class what they liked about the shared responses (regardless of whether the students agree or disagree with the response).

At this point, Professor McMullen introduces IRAC. When presenting it to the students, he emphasizes that students in Legal Environment of Business ought to think about the rules and have an application of those rules lead to conclusion, rather than start with what they think the answer is (or should be), then trying to justify it. Once students are presented with the IRAC method, he distributes a brief excerpt from the textbook identifying the applicable rule and has the students try again. Many students see an improvement in their answer.

For the method to stick, however, it must be reinforced. Some students initially have difficulty distinguishing between the rule and the application. They still have to fight hard to think of the applicable rule before trying to come up with the conclusion. So, Professor McMullen includes an early out of class assignment consisting of four parts:

- Part 1 is simply stating what IRAC stands for.
- Part 2 is a matching exercise. The students are presented a hypothetical and several sentences, of which there is an issue, rule, application, and conclusion.
- Part 3 is a series of multiple-choice questions, each involving the same hypothetical. Students are asked to pick the issue, rule, application, and conclusion.
- Part 4 is an open-ended response, where students are given a hypothetical and asked to respond. The hypothetical covers a topic that is in the early part of the reading, so they ought to be able to come up with the applicable rules. However, students are graded on their ability to use the IRAC format, not the accuracy of their response.

Finally, Professor McMullen reinforces IRAC when grading exams. He posts several videos where he takes former exam questions and types out a response using the IRAC method. He also has a video where he discusses tips for being successful on an exam. In this video, he makes it clear that students who do not use IRAC method when responding to an essay question on the exam can only get a maximum of seventy percent of the credit for that question. For most students, the expectations have been made clear and have been reinforced. That has resulted in better responses to essay questions.