



From the editors....

You probably notice that this issue of *The Second Draft* is about twice its usual length. We expanded this issue to allow us to include the many responses we received to our call for comments on the use of IRAC in the first year curriculum. Many thanks to all who contributed.

The Spring 1996 issue will be correspondingly shorter. We will forego a substantive theme for that issue and limit the issue to informational items. Please mail, preferably on disk, items for the News, Achievements, and Letters to the Editors sections to Joan Blum at Boston College Law School, 885 Centre Street, Newton, MA 02159-1163 by February 15, 1996. We plan to devote the Fall 1996 issue to summaries of presentations at the 1996 Conference of the Legal Writing Institute.

... Francine Sherman, Jane Gionfriddo, and Joan Blum
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The Value of IRAC

IRAC is a tool many of us use to help students provide structure to legal analysis. Students use this tool not only in writing objective and persuasive memos and briefs, but also in writing answers to examination questions. The following comments, highlighted by the "Point/Counterpoint," present a wide range of views on the efficacy of this tool.

Just about every comment sees some danger in using IRAC without flexibility. Beyond that the comments divide roughly into two categories: those that see any standard structural scheme as potentially truncating or skewing legal analysis and those that recognize the value of a standard structure, but may see a need to modify the elements of IRAC to a greater or lesser extent.

Res ipsa loquitur!

Point/Counterpoint: Use of IRAC-type Formulas—Desirable or Dangerous?

Desirable! Fire, Flood, Famine & IRAC?

MARY BETH BEAZLEY
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I confess that I have a hard time seeing how using IRAC could lead to "disastrous" results. I find that IRAC is almost always a valid way —

although not necessarily the only way — to organize legal analysis. Just as you would include certain ingredients when making a cake, so you include certain elements when analyzing a legal issue. The reader must be told what the issue is, what rule is to be applied, how the rule is to be applied, and what conclusion is reached through that application. I just used the passive voice! I could revise it away, but I

won't, because I think that IRAC helps keep the focus on the reader by encouraging writers to discuss important elements in the order that is usually most helpful to the reader.

I suppose that disaster could result if the student used IRAC improperly, but can't that happen with any suggested method of organization? Maybe the disaster comes when the student thinks that each element can be

expressed in just one sentence: “The Issue is... The Rule is... The Application is... Therefore, my Conclusion is...” If the student thinks that one sentence is always enough, he or she hasn’t paid attention in class, or has a teacher who didn’t adequately explain IRAC when teaching it. Because I know we’re all perfect, I’ll lay the blame at the feet of the snoozing student.

My own epiphany with IRAC came when I realized the flexibility of each of the elements. Like the words of a constitutional amendment, Issue, Rule, Application, and Conclusion have acquired quite a judicial gloss in my jurisdiction, with the word “Rule” being the shiniest. When I teach IRAC, I identify it as “the basic building block of legal analysis.” I don’t tell my students that they will always use that same structure, I don’t sit on a mountain top when I teach it, but I do believe that I’m teaching them something that’s very helpful. To illustrate IRAC, I use our good friend Socrates, and construct the classic syllogism with a modern twist:

I: Is Socrates mortal?

R: All human beings are mortal.

A: Socrates is a man.

C: Therefore, Socrates is mortal.

Then I ask them what’s wrong with the syllogism. Some helpful soul always volunteers that the writer hasn’t explained that men are human beings. True, I say, you all know that men are human beings, but your reader might not be able to make the same connection when you’re talking about more abstract concepts.

Application of law to facts means showing the reader where the rule intersects with the facts of the client’s case, and that intersection must be shown explicitly. Don’t make the reader figure it out. So, let’s rewrite Socrates:

I: Is Socrates mortal?

R: All human beings are mortal.

EX: Human beings include men and women.

A: Socrates is a man.

C: Therefore, Socrates is mortal.

I suppose that I’ve modified IRAC. I do tell my students to think of IREXAC if that will help: Issue, Rule, Explanation of Rule (if needed), Application, and Conclusion. But really, “Explanation” is just gloss on “Rule,” (because Explanation isn’t always needed) and that’s where the flexibility comes in.

Each element of IRAC can — and should — be handled in different ways when discussing different issues, depending on the needs of the reader and the complexity of the legal issue. For example, at one end of the spectrum are rules that you can state in a sentence. At the other

end are rules that can be understood only after you’ve quoted a statute and discussed a few authority cases in which the statute was applied. When I teach legal analysis, I note that legal writers have to figure out what kind of rule they’ve got. If the rule is abstract and/or its application is controversial in the current case, it will need more explicit illustration and explanation. If the rule is concrete and/or its application is not controversial in the current case, it will need minimal illustration and explanation (if any). We teach our students the criteria to use when making writing decisions; IRAC simply helps them get started (“Let’s see, what’s my issue? Have I articulated my rule?” etc.).

I don’t apologize for using IRAC in my teaching. The best legal writing is straightforward and easy to understand; I have a similar goal as a teacher. When my students are working on a case with complex facts or issues, I remind them that part of their job is to make the case easy for the reader to understand. Similarly, as a teacher, I want to present the process of legal analysis in a way that all or most of my students can grab onto. IRAC may not be the key to all legal analysis, but as a simple mnemonic that’s helpful to most legal writers — and most legal readers — it’s great.

Dangerous!

Our Focus Should Be Analysis, Not Formulas Like IRAC

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Our profession needs to face squarely that we are first and foremost teachers of legal analysis. We know that only when students understand analysis will they then be able to organize and write about it competently. Formulas like IRAC and its progeny do not help in this endeavor because their simplistic nature masks the series of complex, interrelated steps that students need to learn to analyze and write about legal problems in a sophisticated manner. These formulas will thus never be truly adequate, and we should resist fashioning and refashioning their contours in continual attempts to adapt them to what we teach. Instead, we should turn our attention to designing curricula that take on much more directly the job of demystifying this inherently challenging process of legal analysis and its communication.

When we teach students how to discuss each large piece of the analysis in the discussion

section of an objective memorandum, for instance, we should not use formulas like IRAC; rather, we should focus students on the necessary steps of the analytical process and how that affects communication of analysis, given the audience and purpose of the document. In a common law problem, we should teach students to begin with the standard that the courts articulate. Students need to know that a discussion of a particular standard logically requires the author to begin with the courts’ explicit language. After this initial articulation, students then need to develop what that standard means, using both the courts’ explicit and implicit reasoning. Students should proceed in this manner because the analytical process requires them to develop their analysis in sufficient depth in order to be able to use it to predict on their actual case. Taught in this way, students have no need of a formula like IRAC that tells them to begin with the “rule.”

Students who do use this type of formula too often follow its format without thinking enough about the process of legal analysis. They try to fit their ideas into the “pigeon holes” or labels of the formula’s structure, without fully understanding why they are doing what they do or how they should come up with the necessary analysis. They fragment their ideas by failing to see, or communicate, the interrelationship of the parts; as well, they do not develop ideas in sufficient depth.

Complex legal problems simply don’t break down easily into a statement of a “rule” and a statement of “legal reasoning” or “policy.” For instance, in one of my problems, the courts explicitly use the following standard: “where, when and how the direct victim’s injuries enter the consciousness of the bystander.” This is a “rule” or standard, but the reiteration of this explicit standard is completely insufficient to explain just why each case in the jurisdiction found that the facts before the court satisfied the standard or not. The courts also articulate the general policy that this standard should help to “limit the scope of a defendant’s liability.” This is a statement of the courts’ general policy, but it, also, is insufficient, without a great deal of further explanation, to explain why each case came out the way it did.

In this problem, students must go beyond the explicit standard and reasoning and figure out the implicit reasoning of the courts in this group of cases—the implicit reasoning that explains why certain situations before the courts have satisfied the standard and why others have not. If students don’t do this level of case synthesis, then they simply are not able to

predict adequately what the future court would do on the facts of their case.

If students tried to use an IRAC-type formula in the final written discussion of this analysis, they would have to struggle to adapt the parts of the formula to the sophistication of the ideas being conveyed. They wouldn't be helped by being told they must simply state a "rule"; and they wouldn't be helped much more by being required to include "policy" or some such label for the courts' reasoning. On the contrary, to analyze this problem well, students must understand and grapple with the actual analytical process to figure out just how to weave together in logical fashion the explicit and implicit reasoning of this line of decisions. Then they must use the structure of this analysis to decide the best organization (or organizations) to convey the ideas to a reader in several paragraphs of general legal principles and case illustrations. At best, students would have to waste a great deal of time trying to fit this analysis into an IRAC-type formula; at worst, students would fail to see the complex relationships and depth of analysis required to analyze this problem in a sophisticated manner.

The bottom line is that our profession should not use formulaic concepts like "IRAC" that do not adequately teach the very real complexity of legal analysis and its communication. We do our students no favor if we simplify what cannot be simplified. Legal analysis and its communication is difficult; but it is attainable by all students if we break down the process into manageable, logical parts that accurately represent the sophistication of how lawyers reason.



IRAC—A Desirable Tool If Used With Care

ON IRAC
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I have found that IRAC is a valuable tool to use when teaching legal analysis to first year law students, but I believe that it should be presented to students in context. I present IRAC to students in the context of a problem with which they are already familiar so that they can see how their arguments can be presented logically in writing. Further, I tell them that it is

only a structure and that they can and may sometimes have to modify it, but they should only do so consciously and intentionally.

Before presenting IRAC, I assign a hypothetical, which students are told is governed by a short statute and a short excerpt from a case. Students are given the statute and case excerpt and are assigned to act as counsel for one of the parties. After a couple of days of analyzing the hypothetical on their own, students report to small workshops in groups of about twelve students. Students are given some time to meet with the other students in their workshops who also represent their client to gather their best arguments. A spokesperson from each group then presents the group's arguments to the class and attempts to rebut any counter-arguments. After each side has had a chance to argue and rebut, other students are allowed to join in the debate.

Subsequently, I collect some of the best arguments and draft a discussion of the problem. This draft is distributed to students to review, then I introduce IRAC. First, I tell the students about several acronyms: IRAC - Issue, Rule, Application, Conclusion; IEC - Introduce, Explain, Conclude (from the Nutshell on Legal Writing); IRAAC - same as IRAC, but add Analogous cases; and TRAC - Thesis, Rule, Application, Conclusion. I tell them that these acronyms represent a basic structure that can be used to logically present the necessary parts of their legal analysis.

With the help of an overhead projector, we then examine the draft they have been given. I explain what the Issue is and why it is necessary, then we mark the main issue in the draft as well as any smaller issues found within the analysis. Immediately, they are able to see that an issue can be a single statement, it can be combined with a rule, or it can be combined with a conclusion, depending on whether a particular point is in dispute. I identify the Rules within the draft, both general and specific, the main Application as well as the application of the more specific rules, and the Conclusions found within the draft. We talk about the "big IRAC" as well as the smaller "IRACs" found within the application of the "big" rule.

The example draft I use illustrates that some issues that are not in dispute can be discussed in one short paragraph. The paragraph may consist of one sentence that simultaneously provides the issue and the conclusion and a second sentence that provides the rule and the application. I also point out that counter-arguments and rebuttals are part of their

application of the law, and I show them in the draft where and how these fit in. Thus, they are told to think and outline in terms of IRAC, but to use common sense when revising their work to ensure that their writing flows and is not overly repetitious.

Finally, when students come to see me with questions about their own drafts, I have them show me where the parts of IRAC are found in their analysis. If a part is not found or is found out of place, the student must explain to me why he has organized his memo in this way. When the student is able to articulate a logical explanation, then he has thought through the parts of IRAC and usually has a well organized memo; however, when a student cannot do so, this is often a sign that the student is missing key parts of his analysis. I then encourage the student to create an outline with IRAC as the basic format, which usually helps the student to refine and tighten up his analysis.

In conclusion, I have found that IRAC is a valuable tool in teaching legal analysis. I am aware of some of the criticisms of IRAC, but I think that its negative aspects can be overcome or minimized by the professor when he or she presents the information to the students.

WHY IRAC SHOULD BE IGPAC BARBARA BLUMENFELD UNIVERSITY OF NEW MEXICO SCHOOL OF LAW

While IRAC is generally a good organizational tool, I find that the R or rule part of this formulation is often unclear to students. Despite what they are taught in class, many want to see "rule" as a general premise only, forgetting that it must also include fact specific examples of how that general premise has been applied in the past. This failure leaves them without any precedent to which they can analogize the facts of their own case.

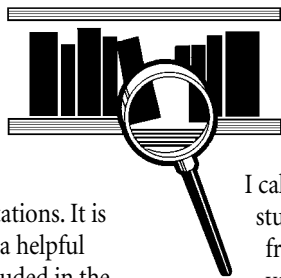
Students must be reminded that the R part of IRAC consists of two pieces: a general rule usually derived from a statute or caselaw, and cases that explain that rule and illustrate how it has been applied to specific fact situations in the past. This second part consists of relevant precedent. The R of IRAC then becomes G (general rule) and P (precedent). IRAC thus becomes IGPAC.

By actually dividing the R into two pieces for teaching purposes, students more clearly grasp the necessary components of a rule section as it appears in a memo's discussion or the argument section of a brief. If students outline using this format they will be more likely to

include fact specific holdings from precedent. Then, when they get to the application (A) section of their IRAC/IGPAC they will have facts to which they can analogize and distinguish their own facts as they prove their conclusions.

Use of IGPAC encourages students to give a more complete analysis of their issue. The IGPAC formulation reminds students that they must explain to the reader of their document both the general rules that apply to the issue under discussion and how those rules have been interpreted and applied in the past. The order (G then P) reminds them that they must move from the general to the specific.

It is the reasoning of the application of law to the facts of their case, the analogy and distinction, that is often missing from students' papers. With the IGPAC foundation reminding them that "rule" includes precedent that decided specific fact situations, students see the "rule" as more than an abstract principle. They see how the law can actually support a particular conclusion in their case. Students are then more likely to actually present the comparisons and distinctions between their facts and those of the precedent, showing the reader that because of key similarities or differences their case should have the same or a different result.



IGPAC, like IRAC, has its limitations. It is simply an organizational tool, a helpful reminder of what must be included in the discussion of an issue and a logical order in which to present that information. I think IGPAC more clearly expresses what must be included in a rule section of a discussion. But, whether IRAC or IGPAC is used, students must be reminded that it is not an end in itself. They must understand that their goal is to present an analysis that is legally sound and that the reader of their document can follow and understand. To the extent that IGPAC assists in this goal it should be used; however, it is not something that is set in stone and from which they should never deviate. If, in an appropriate case, there is a good reason not to use IRAC/IGPAC then they should not do so. The key here is whether they can articulate a good reason for using some other organizational scheme and whether that other scheme furthers the ultimate goal of the document they are writing. I believe that in most instances students will find IGPAC to be a useful organizational tool.

IRAC: TENTATIVE AND FLEXIBLE AND THEREFORE RELIABLE
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Like many conventions of composition, IRAC is most useful when applied flexibly to achieve the objectives of a particular assignment. As a tentative and general approach to organization based on deductive reasoning, IRAC provides an analytic framework that is illuminating or persuasive in most legal analyses or arguments.

I call IRAC a tentative approach because we should teach students to feel secure to depart from IRAC in any document, such as a complaint, in which they can best meet their objectives with a different framework. Such an approach is analogous to our treatment of active voice as a convention of composition. In most instances, active voice promotes the objective of concisely providing important information in an orderly fashion. Our respect for the power and precision of active voice in most contexts, however, does not prevent us from reminding students that they may occasionally prefer passive voice to gain special emphasis, to mask the identity of the actor, or to achieve some other legitimate purpose. Nor should our freedom to depart from IRAC when necessary blind us to its obvious merits in most contexts.

I call IRAC a general approach because students should use it only as a general framework that can be adapted to varying circumstances. For example, when advocating a position in a brief rather than discussing an issue in an office memorandum, a student should begin his or her argument with a point heading that states a conclusion, suggesting the need to slightly modify the acronym from "IRAC" to "CRAC." Moreover, in any analysis or argument, the elements of IRAC or CRAC will vary in depth or complexity. When discussing an issue in an office memorandum, a student's statement of the Rule element of IRAC might be no more than a brief statement of law and citation to authority if that law is simple and undisputed. In discussing the Fact Application or Analysis element of IRAC on the same issue, however, the student may appropriately spend several pages analyzing complex categories of facts to determine whether the undisputed legal standard is satisfied.

Conversely, when addressing the next issue in the memorandum, the student may need to discuss competing legal approaches to an

uncertain rule that will be applied to simple, undisputed facts. In such a discussion of the Rule element of IRAC, the student may appropriately spend several pages exploring the text and policy of statutory provisions and critically evaluating, distinguishing, and analogizing case law. Indeed, when advocating a legal rule in a brief on such an issue, some writers describe their process not simply as IRAC, or even as CRAC, but as CRPAC, reflecting the need to prove the rule that the writer is advocating in the face of a dispute about uncertain law.

In each of these examples, however, the writer is applying a major premise to a minor premise to reach a conclusion, at least loosely organized around a model of deductive reasoning suggested by the acronym IRAC. When flexibly applied in this manner, IRAC and its close relatives have fewer limitations than its detractors may suggest. Perhaps we can all agree that students should avoid applying IRAC mechanically, just as they should avoid mechanically applying legal rules without appreciation for the policies that justify them. Some of us address this problem by defining IRAC as a tentative, flexible, adaptable framework that students should use creatively, adapt readily, or occasionally reject in favor of an alternative framework. Others achieve the same result by defining IRAC more narrowly, rejecting it as overly simplistic, and replacing it with ostensibly different approaches and acronyms that simply give new names to a flexible application of IRAC. In either case, I believe that we are addressing similar considerations and reaching for the same goals.

KEEP ON "TRRACING"
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My initial reaction to the question of whether IRAC is a helpful tool for teaching legal analysis is another question: why the acronym IRAC? Instead, why not TRRAC?

My primary mission as a legal research and writing professor is to teach students to be effective legal problem solvers. The usual legal problem solving process is to research and analyze the questions posed by the problem, and then to express and support the answers to those questions in writing. Assuming that I correctly understand my mission and the legal problem solving process, then analysis of a question raised by a legal problem should begin with the answer to that question. "I" for issue, however, does not correctly convey that idea. That's why my acronym for the written legal analysis paradigm begins with a "T" for thesis.

After all, lawyers are not mystery writers (at least, not usually) largely because the readers of their legal writing don't want them to be. Judges are busy; fellow lawyers are busy; opposing lawyers are busy. And all these people must make important decisions based on lawyers' written communications. The questions raised by the legal problem are identified in the issue statements of the legal memorandum, the appellate brief, the memorandum of law in support of a motion, or in the introductory paragraph of a letter. When these busy decisionmakers get to the meat of these different types of legal text, i.e. the discussion section or argument section, they want the bottom line first and the support for that bottom line second.

This makes sense to beginning law students. Even if they learned (or got away with) habits in college, like writing towards a conclusion or stream of consciousness writing, in "real life," most of them understand that you normally communicate your resolution of a problem by first giving your answer to that problem. Any time we, as teachers of legal process, can provide context for what we're trying to convey to our students, we're halfway home. If we show our students how legal process mirrors "real life" behaviors, then they won't be as intimidated and they'll gain confidence as legal problem solvers sooner.

My other problem with IRAC is that it doesn't make sense to have only one "R" in the acronym. The law isn't always settled and even if it is, it isn't always immediately comprehensible. Consequently, it's usually not enough to simply identify the rule. In order for the reader to understand the writer's application of the rule (the "A" in the acronym), the reader also must understand the rule. Therefore, the reader needs an explanation of the legal rule by way of policy discussion, discussion of precedent, or some other analytical vehicle. That's why I put two R's in my acronym.

Anyway, TRRAC sounds and looks more appealing than IRAC. It's catchy and it makes sense, so it's easier for students to remember. This speeds up their understanding of it, so they more quickly learn to use it effectively. For example, I'll overhear students expressing their frustration with trying to fully and coherently analyze an issue presented by one of their memo problems, and I'll hear other students responding by asking: "Did you TRRAC it?"

My next reaction to the question posed is the recognition that, unless carefully taught, students will both misuse and abuse any

method for structuring written legal analysis. In other words, as law students and later as lawyers, they will stuff every exam answer, legal memorandum discussion section, motion argument, and appellate brief argument into one giant IRAC without really understanding the paradigm's proper function and without fully analyzing all of the legal questions presented by the problem. That means I must help my students see the distinction between analyzing a legal problem and analyzing the legal issues, sub-issues, and sub sub-issues raised by the problem.

First, early in the semester, I explain the components of TRRAC as my suggested paradigm for written analysis of a legal issue. I show the students examples of fairly straightforward single issue legal analyses, pointing out each TRRAC component and common signals by which each component is identified. The students also see that the logical place for counter-analysis depends on whether the counter-analysis is part of rule identification or rule explanation or of rule application. I also give them unlabelled "strong" and "weak" written legal analyses, asking which one they prefer. They invariably select the one following a deductive structure, noting that it's more logically organized and thus easier for them to follow.

Second, further into the semester, we walk through a legal problem containing one issue with some sub-issues or two issues with maybe some sub-issues to each issue. After the students read the hypothetical and the relevant law, they brainstorm to pull out all the legal questions raised by the problem. As their understanding of the problem increases, they're able to take those questions and put them into a framework so they can separate issues and distinguish issues from sub-issues. Here's where I like to wow them with computer technology. In class, I use a laptop where the monitor is projected onto a screen by an overhead projector. Then, the students tell me the order in which to outline all the questions posed by the legal problem. Afterwards, I print out the outline and give copies to the students.

Third, we compare this conceptual framework to a sample legal memorandum discussion section analyzing the legal questions posed by the problem. Here, the students see how variations of TRRAC are plugged into the framework to analyze the issues and sub-issues. Again using the laptop computer and overhead projector, we literally plug variations of TRRAC into our framework to reflect how the writer analyzed the issues and sub-issues.

This emphasizes both the utility and flexibility of the paradigm. The students see that some questions can be analyzed together and others must be analyzed separately. They see that you don't necessarily need a thesis statement and a conclusion for every single question raised by the problem. They see that legal rules require varying degrees of explanation and that some legal rules don't require any explanation. And they see that the sophistication level of rule application depends on the factual complexity of the legal problem. The students also appreciate that if their written legal analyses follow a structure in which they first identify the relevant law before applying it to the facts of their legal problem, then their legal writing is more reader friendly and less likely to be superficial or incomplete.

My final reaction to the question posed is the realization that I must present the paradigm to the students as an analytical writing tool, rather than as a pair of formalistic writing handcuffs. I do this by assigning them a series of legal problems presenting increasingly complex legal questions requiring increasingly complex variations of the paradigm. At the same time, the sophistication of their understanding and manipulation of the paradigm increases. Once the students have completed their two required semesters of legal research and writing (assuming they have taken the course seriously enough), they're well on their way to becoming effective users of the legal problem solving process.



**A NEST OF IRACS
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DISTRICT OF COLUMBIA SCHOOL OF LAW**

IRAC, the lawyer's version of the classical Aristotelian syllogism, can provide beginning students with a useful framework for organizing a legal analysis. It is seductive in its seeming simplicity, but for students just starting out it provides a model for understanding how to apply the facts to a rule and for seeing what proof can mean in a legal dispute.

Most students learn the basic model readily enough. But what some students do not necessarily see intuitively, and what a teacher may

not teach explicitly, is that legal analysis typically involves a series of nested IRACs — IRACs within IRACs, wheels within wheels. The student may not see that the overall IRAC — the main conclusion — is based on examination of the result of each element's IRAC. Lacking that insight, the student is likely to short circuit the scope of the necessary analysis and not understand why. The student does not see that each element of a rule calls for its own IRAC analysis.

Consider, for example, a student whose grasp of legal analysis is still shaky trying to decide about liability for trespass to land in the following situation:

Hiker, tired from a long trek on a hot day and anxious to get back to his camp, decided to take a short cut. He climbed a barbed wire fence and started across a grass field used by McDonald, a tenant farmer, to keep some sheep. Hiker suddenly came upon the sheep, which bolted away in alarm. One of the sheep, running in panic, stepped in a hole and fell violently, breaking its neck. The sheep's dying bleats brought McDonald to the scene, where he found Hiker trying to get back over the barbed wire fence. Does McDonald have a cause of action against Hiker? If yes, what likely outcome?

The student is sure that there is an intentional tort but concludes it cannot be trespass to land because McDonald did not own the property and Hiker did not intend to stampede the sheep. What the student forgot was that each element of the cause of action of trespass to land raises an issue for analysis, has some defining authority, requires determination of whether the facts appear to satisfy the terms of the definition, and can be accepted or rejected with some degree of assurance in light of the facts and the definition. Had the student stopped to recall each element — e.g., the right to exclusive possession, the intention to cut across McDonald's property — and the element's definition and case law, the student might have avoided snap judgments that short-circuited the positing of criteria against which the facts could be aligned (assuming, of course, the student knew the definitions in the first place).

Some law teachers, of course, explicitly teach a nested IRAC structure. For example, I believe that Professor Laurie B. Zimet, Director of the Academic Support Program at Santa Clara University School of Law School, uses a graphic system and nomenclature involving capitals (I, R, A, C) and lower cases (i, r, a, c), with

subscripts designating different elements of the rule. Other teachers undoubtedly have their own mnemonic devices and teaching methods, as well as procedures for counteracting the seductive and misleading aspects of a simplistic IRAC model. Whatever devices are used, however, my experience suggests that, for some subset of students, clear and repeated instruction about IRACs within IRACs will greatly expedite their learning some key elements of legal analysis and proof.

EVOLUTION OF IRAC: A USEFUL FIRST STEP JO ANNE DURAKO VILLANOVA UNIVERSITY SCHOOL OF LAW

As a session during the 1994 Legal Writing Institute Conference showed by its title — The Uses and Abuses of IRAC: A Workshop on How to Present the Tool to New Legal Writers — IRAC, though useful, is not without its pitfalls¹ What began as a simple idea to help fledgling law students crack the code of legal analysis has evolved into a technique with many uses, some far different from the original, narrow aim. Now, at some law schools, including Villanova, IRAC serves as a first step in a process of teaching analysis. This process refines IRAC into CRAC for organizing analysis in the prewriting stage, then moves on to Neumann's paradigm for proof of a conclusion of law.² Rather than abandoning the simple tool of IRAC, some legal writing teachers use its simplicity as a building block for more complex legal reasoning.

When I began teaching legal writing two years ago, I reviewed several textbooks for ideas about teaching legal analysis and found references to IRAC.³ I realized I needed help because there is no natural ability to structure legal arguments. In fact, in many ways the accepted structure for legal analysis is counter-intuitive and contrary to what students have learned as undergraduates. Consequently, students benefit from having some organizing principle to help decode legal problems and to help them begin the complex process of learning legal analysis.

I use IRAC during my second class meeting as an early introduction to one possible structure for analyzing a simple legal problem. Students use IRAC as a tool to help decipher the facts for a false imprisonment problem and structure their thinking about the solution to that problem. They identify the issue of false imprisonment before they read two relevant cases. From the cases, students practice extracting the rule for false imprisonment. Next, in discussion groups, they apply the newly discovered rule to their facts and, finally, conclude. After this

exercise in analysis, we discuss how to communicate the results in a legal memorandum.

For this next step of writing, I introduce CRAC as a refinement of IRAC. I mention the utility of IRAC, especially for issue spotting in certain types of exams, but contrast it with the requirements of legal writing, where the issue is important, but it is the application that interests the writing professor and the conclusion that concerns the client. This integration of IRAC and CRAC seems to work particularly well as a progression. Students have seen how IRAC helps them decode the legal problems. The students are then sufficiently convinced of the usefulness of CRAC for organizing their writing that they use it when drafting their first writing assignment. CRAC then has its proper foundation.

After students have experimented with IRAC, they begin to see the shortcomings of the simple structure. Students see that the four parts of the IRAC structure are not equally important. The third part, the application, requires the most attention — there should be a long A in IRAC (pronounced I-RAKE). As the assignments become more complex, students realize the limitations of CRAC as well. For example, there is no call for counter-analysis or consideration of policy implications in CRAC.

After this experience, students are then ready and sufficiently experienced to learn a more powerful technique to help them organize their writing — Neumann's four-point paradigm.⁴ This more comprehensive approach addresses the shortcomings of IRAC and CRAC for seasoned students. Without the firm foundation provided by the progression through the simpler techniques, however, the highly evolved paradigm cannot take hold.

¹ Concurrent Session on July 30, 1994, presented by Jessie Grearson and Marian Staats of John Marshall Law School.

² Richard K. Neumann, Jr., *Legal Reasoning and Legal Writing: Structure, Strategy, and Style* 83-102 (2d ed. 1994).

³ Villanova uses Nancy L. Schultz et al., *Introduction to Legal Writing and Oral Advocacy* (1993), which does not explicitly discuss IRAC. For texts that do discuss IRAC, see Veda R. Charrow et al., *Clear & Effective Legal Writing* (2d ed. 1995); Charles R. Calleros, *Legal Method and Writing* (2d ed. 1994). Neumann, *supra* note 2, discusses the limitations of IRAC in the *Teacher's Manual*.

⁴ Neumann, *supra* note 2 at 84. The four-step paradigm includes —

1. a statement of the conclusion;
2. a statement of the rule that supports the conclusion;
3. proof of the rule through citation to authority, through explanations of how the authority stands for the rule, through analyses of policy, and through counter-analyses; and
4. application of the rule's elements to the facts with the aid of supporting authority, policy considerations, and the counter-analyses, thus completing proof of the conclusion.

IRAC FORMAT ACCOMPLISHES THE LIMITED PURPOSE IT IS DESIGNED TO ACHIEVE

LINDA H. EDWARDS

MERCER UNIVERSITY LAW SCHOOL

Most of our criticisms of IRAC fall into three categories: (1) discomfort with using any heuristic model; (2) the perception that an IRAC format does not accommodate forms of reasoning other than rule-based reasoning; and (3) dissatisfaction with the IRAC format itself. Because of space limits, the following thoughts speak only to a couple of aspects of the third category.

These thoughts are based on two assumptions. First, they assume that we are evaluating IRAC in the context of teaching introductory legal writing as opposed to law school exam writing, bar exam writing, or advanced legal writing.

Second, they assume that most of us adapt the basic IRAC format to fit the writing task and stage of the assignment. For instance, many legal writing teachers use CRAC (a version that begins with the conclusion rather than the issue) for teaching brief writing. Some teachers, finding that students forget what should go into a discussion of the rule itself, add a section after “R” to remind students to explain where the rule comes from, what it means, and how it functions. Adapting IRAC to fit the particular pedagogical goal and the particular document is desirable.

However, whatever edited version of the IRAC format we select, the format serves the purpose for which it is designed. The format is designed to help a novice writer organize the discussion of a single legal issue — that is, a single element or condition. That’s all. It guides the writer in stating the issue or conclusion on that element, in stating and explaining the governing law on that element, in applying that law to the facts, and in stating a conclusion.

We become frustrated with IRAC, and understandably so, when we expect it to do more than organize the discussion of a single element. Most legal questions raise issues about more than one element or condition, and the IRAC format does not provide an “umbrella” organization. It does not help the writer assemble these individual discussions of separate elements. This is part of the reason that IRAC is not especially helpful in an exam setting.

However, within the writer’s umbrella organization, an IRAC format performs its own

function. It organizes the discussion of a single issue by guiding the writer to state and explain the governing rule and then apply it to the facts.

By providing this guidance to a writer, an IRAC format offers a technique for meeting one of the biggest pedagogical challenges in teaching legal analysis. Students come to law school with more proficiency in making fact-based arguments than in making rule-based arguments. Many students do not even understand the difference between explaining the rule and arguing the facts.



An IRAC format separates rule explanation from rule application. Separating the two allows the novice writer to distinguish between rule explanation and factual argument. Distinguishing between the two allows the writer to evaluate the appropriateness of the depth of each section in the draft.

Novice writers learn a great deal about what rule explanation is when they learn what rule explanation is not. The learning experience comes when the student confronts a lean “R” section in an IRAC format and realizes the need to come up with something to say in that empty section.

Undeniably, some students have difficulty with this. A few of those students have come to law study with well-developed and well-integrated reasoning skills. Those few may be hampered by too much initial emphasis on IRAC. However, those excellent students are fewer than we sometimes think, and we can ease the emphasis on the model through individual work with those students.

More often students who have difficulty with an IRAC format are students who are unskilled in rule-based reasoning. Since most students come to law school from a culture far less skilled in rule-based reasoning than in other forms of reasoning, a rule-based heuristic model is likely to be difficult for some of them.

However, law students must at some point develop rule-based reasoning skills. Initial confusion may simply signal the importance to the student of practice in rule-based writing. As teachers, we must ask ourselves what will improve the student’s skills in the long haul, not just what will yield the best result in the student’s first few documents.

An IRAC format does its job, which is to help a writer organize the discussion of a single

discrete issue and to help a novice writer begin to learn rule-based reasoning. This lesson is only part of learning to reason through and write out a legal discussion, but it is an important part. Initial student difficulty with rule-based reasoning is to be expected. As a matter of fact, that difficulty may demonstrate the need for and the value of the practice.

COMMENTS ON IRAC

TONI M. FINE

NEW YORK UNIVERSITY SCHOOL OF LAW

This is in response to your request for comments on the use of “IRAC” as a vehicle for teaching the structure of legal analysis. Although I have used some variation of this method in teaching — both in NYU’s Lawyering Program and in Common Law Methodology, a class I now teach to foreign-trained lawyers in NYU’s M.C.J. Program — I have some serious reservations about both its practical utility and its value as a pedagogical tool.

First, I share the concern expressed by others that the IRAC method of teaching legal analysis is overly simplistic and too formulaic to be an adequate approach for the wide range of projects that most students will encounter in practice. In part because tools like IRAC are introduced to students at the very beginning of their legal careers, when subtleties of the emphasis to be given to certain rules may be lost, students often come away with the mistaken notion that IRAC may be appropriately used at all times and for all purposes. Clearly it is not. There are times when the structure represented by IRAC is completely unworkable; there are other situations in which, while an analysis organized around IRAC concepts would be feasible, it would not be the best approach. Beginning law students, who are all too eager to be offered “rules” and normative standards for across-the-board application, view IRAC as a safe harbor in a sea of indeterminate concepts, which they enthusiastically embrace.

My second concern is an outgrowth of the first: as a matter of pedagogy, does it really make sense to offer students an approach that substitutes for student-driven judgment? We all know that, if given the opportunity, students will react, rather than constructively create methods of analysis or challenge competing approaches. Giving students a convention within which to operate frustrates our efforts to develop in students an understanding of the process of legal analysis by deconstructing the various

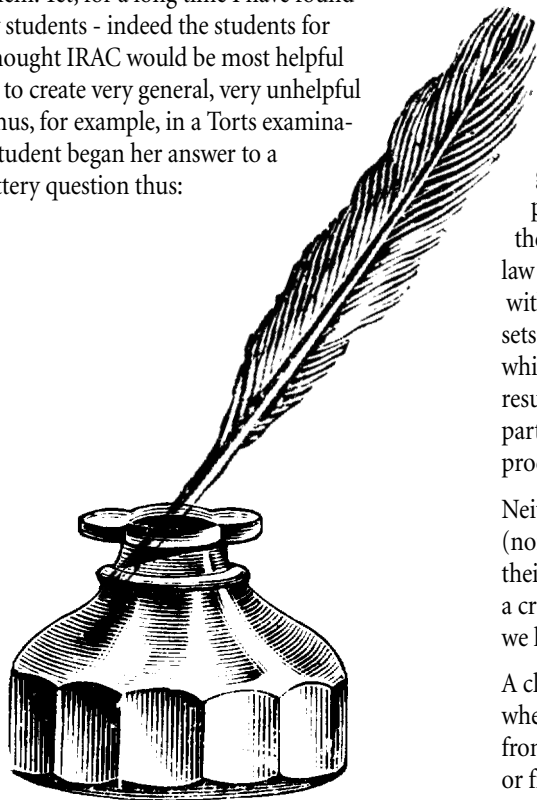
steps, and then structuring an analytic framework appropriate to a given task. Even if IRAC were the most appropriate protocol for all situations, the very act of providing a formula reduces dramatically the likelihood that the students will ask themselves (and us) the hard questions about why things are done in a certain way; why a particular approach works best under a given set of facts and circumstances; what the theory is that underlies any systematic approach to legal analysis; etc.

All this is not to say that IRAC should be discarded as a teaching tool. IRAC should, and undoubtedly will, remain a critical focus in teaching legal analysis to beginning law students. IRAC offers considerable benefits, and is a useful starting point for many forms of legal analysis. What we as legal educators need to keep in mind when we present concepts like IRAC to our students is that such constructs are only starting points for developing the best analytic model or models for a given task. The critical focus should remain on the process of developing and executing a framework for analysis rather than on the rote application of any predetermined anachronistic method.

"IRAC" OR "(QFRFR) + IRAC"

**DENNIS R. HONABACH
DISTRICT OF COLUMBIA SCHOOL OF LAW**

IRAC is a powerful tool for analyzing case materials, and for that matter, most every other legal problem. Yet, for a long time I have found that many students - indeed the students for whom I thought IRAC would be most helpful — tended to create very general, very unhelpful IRAC's. Thus, for example, in a Torts examination one student began her answer to a simple battery question thus:



ISSUE: Is D liable for a Tort?

RULE: D is liable if D acted wrongfully (or even worse, tortiously.)

ANALYSIS: D, while driving her automobile, did injure P and, therefore, D is liable if D's act was wrongful (see below).

CONCL: D is liable for a tort if D acted wrongfully and, in so doing, proximately caused P's injury.

Needless to say, such "reasoning" was not helpful and, given the time constraints of the examination, did not lead to acceptable analysis or a satisfactory grade.

At first I was puzzled by the student's seeming lack of judgment. Surely, I told myself, I had taught her to be more critical about the relationship between facts and rules than her answer suggested. Upon reflection, however, I realized that the problem lay neither entirely with the student nor with my teaching.

Rather, when confronted with the examination question, the need to formulate an answer and the seemingly all inclusive boundaries of IRAC, my student simply had attempted to shoehorn her answer into the IRAC format. Starting at the beginning, she had asked herself the first obvious question: Did D commit any of the torts we have studied? She formulated that first question as a statement of an "Issue" and thus began a wordy and ultimately unproductive response to my question.

The problem is not that the student totally lacked judgment, but rather that IRAC is a somewhat incomplete and flawed tool in the hands of the beginning, struggling student. IRAC provides a powerful vehicle for expressing the tight, well organized answers law professors seek. By beginning with a statement of the issue, one sets the stage for all that follows. But while IRAC completely describes the result of good analysis, it only partially describes the analytical process itself.

Neither law professors nor lawyers (nor successful law students) begin their analysis of a legal problem with a crisp statement of the issue. First, we listen to the question asked.

A client, for example, might ask whether she can recover damages from the driver of the car who hit her or from the party she believes

promised to supply her with crucial materials for her business. To answer her, we first review the facts carefully. Next (or even concurrently) we canvas our memory for legal rules that might be applicable to those facts. We then return to the facts and "try on" the various rules, attempting to identify those rules that are actually called into question by the facts. We discard those rules not applicable because the facts simply do not call for their application. We also set aside those rules that are so definitely applicable as not to be questionable. What we have left are those rules which may or may not apply, given the facts and possible interpretations of the rule. We use those rules and the facts that call them into play to formulate the actual issues in the problem. We then proceed with our analysis until we reach a conclusion.

We law professors expect our students to engage in much the same analytical process. Generally we supply the facts and the question(s). We expect the students to identify, analyze and formulate a tentative conclusion about the issue(s) in light of the relevant facts and rules. We tell them to IRAC the problem. Those who take us literally unfortunately jump right in and try to formulate an issue. The analytical device we emphasize—IRAC—encourages them to do just that because it obscures the implicit message that before one can identify issues and undertake valuable analysis, one must engage in some preliminary analysis. The strong students understand the implicit message and employ IRAC profitably; the weaker students, however, too often miss the implicit message and founder. For them, IRAC becomes the proverbial millstone.

We could help students by being explicit about the need to do preliminary analysis before trying to formulate issues and the like. Perhaps we should expand IRAC into something like "(QfrFR)+IRAC" in which Q = question, fr = the entire set of possibly relevant facts and rules, and FR = relevant fact(s) and rules used to formulate the I of IRAC. We should emphasize that the terms within the parenthesis - (QfrFR) - are the necessary preconditions for an IRAC analysis.

I do not claim new insight, nor do I seek to overcomplicate the IRAC process or coin a new acronym. Rather I simply suggest that we could help some students by using a device that makes explicit the important point that they can not formulate the Issue component of IRAC without undertaking two preliminary tasks. Students are more likely to succeed if they are reminded that they first must sort through all of the facts and possible legal rules in light of

the question asked, and then, having identified tentatively the relevant rules, must return to the facts and sort out those elements of the rules that the facts call into play. Adding (QfrFR) to the standard IRAC formulation would provide that reminder.

REFLECTIONS OF IRAC

CHRIS IJIMA AND BETH COHEN
WESTERN NEW ENGLAND COLLEGE
SCHOOL OF LAW

At a recent staff meeting of the Lawyering Process Program faculty, our discussion turned to the different approaches we could use to teach our first persuasive/closed universe writing assignment. In particular, the conversation focused on how to best present the format for and explain the process of legal writing to the students. We explored myriad possible approaches — syllogism,¹ “CRRPA”² IRAC, TRAC, etc. . . . and concluded that each of the various formats were similar in their essential components. Thus, we agreed that IRAC provided a good starting point to explain the components of legal argument. It required students to present a good, clear statement of law, a clear and affirmative statement of the issue, an articulation of applicable rules, an analysis and an application of facts to rules of law, and a statement of the ultimate conclusion or prediction. These elements, we concurred, were essential components of good legal writing that should be contained in all good and thorough legal writing from inter-office memoranda and persuasive court briefs to law school exams.

That being said, we also discussed in some depth what we felt were inherent and fundamental weaknesses with IRAC and its related approaches. Fundamentally, we agreed that it was important not to present IRAC as “the only way” to write a legal document, but only as a helpful framework for beginning writers. Indeed, we thought it was important to note to students that IRAC was a simplified format for writing and an organizing tool for legal analysis, but in the final analysis, it was not synonymous with nor a substitute for legal analysis itself.

It is our view that part of the focus of teaching a student how to write in his/her first year is to emphasize how legal analysis “in the real world” is a question of context. What a case “means” depends upon whose interest one represents, the particular facts of one’s client, the court one is in, the ethical constraints of the attorney, etc. It is this orientation that complements, but may on first blush appear to conflict with, the traditional way first year students are taught legal

analysis. IRAC as a methodology is more suited to the latter orientation than the former. For example, first years get indoctrinated with terms like “holdings” and “dicta” and “rules of law” in both their legal writing and other traditional first year courses. But what does “Rule” actually mean in the IRAC/legal writing context? As all practicing lawyers know, good faith legal arguments (and many winning ones) often proceed from language in cases reformulated as propositions of law. Propositions that first year professors might dismiss as “dicta”. Thus, there are “Rules” and then there are “rules,” and students should understand the concepts, differences, and uses of both when they are taught legal writing.

Moreover, the critical lawyering lesson for those of us teaching first years is to stress that the true overall organizing tool of the lawyer’s written work is the story—the perspective and applicable legal themes—of the client. A document strictly adhering to the IRAC format is often fragmented and compartmentalized. Indeed, it is the notion of an over-arching theme and framework to legal argument that, we find, most difficult to teach within the IRAC constraints. We agreed that the ways in which we have tried to apply IRAC to both the “large” conceptual elements of the writing and to the subordinate derivative issues were unsatisfying. In fact, we found teaching students how to apply IRAC to different aspects and components of a particular piece of advocacy sometimes counteracted one of its major advantages — the simplicity of its application.

In sum, although during our conversation the pitfalls and inadequacies of IRAC seemed at times more compelling than its advantages, we finally agreed that the approach served as a useful building block from which to construct more sophisticated approaches to analysis and writing. Indeed, pedagogical considerations aside, if one remembers that the two most common emotions first year law students experience are confusion and panic, IRAC’s stolid accessibility may be its greatest attribute.

¹ See James A. Gardiner, *Legal Argument, The Structure and Language of Effective Advocacy* (1993).

² See Richard K. Neumann, Jr., *Legal Reasoning and Legal Writing, Structure, Strategy, and Style* (2d ed. 1994) (presenting as paradigm: conclusion, rule, rule proof, and rule application).

RAFADC, NOT IRAC
SAM JACOBSON
WILLAMETTE LAW SCHOOL

A Far Side cartoon shows two scientists staring at an elaborate equation on the blackboard

with one scientist pointing to a blank spot in the middle of the equation and advising the other that “in here, a miracle happens.” To me, this discussion could very well be about what occurs between the statement of the rule and arriving at the conclusion in IRAC.

IRAC gives my students little guidance on how to construct a legal argument based on reasoning by analogy. It gives me little assistance in helping my students see more than one side to an argument or in helping them to make full use of their facts. My beginning students often have no problems with developing the rule, and they rarely have problems with making a conclusion, even if they have omitted everything inbetween. However, they almost always have problems with what goes in the middle: developing a sufficiently complete legal analysis of a point where the legal analysis moves logically from the thesis to the conclusion and where it gives support to the conclusion.

To help guide my students through analogistic reasoning and to help them develop a more complete legal argument, I have developed an alternative tool: RAFADC (pronounced ‘raffaduck’). While the acronym initially produces chuckles, it works well for my students in helping them master the analysis of a point. The components of this tool are:

Rule: The rule may also be the thesis sentence for the paragraph. It should be preceded by a transition or transition sentence that connects the rule with the analytical framework for the document.

Authority: The authorities provided here include those that give support for the rule and that help factually illustrate the scope of the rule.

Facts: These are the facts of the problem that are relevant to the point.

Analogize/Distinguish: The writer would analogize and distinguish the facts of the problem with the facts of the authorities to determine if the facts of the problem are within or without the scope of the rule.

Conclude: The conclusion would reflect how a court would most likely rule on the point.

In addition to giving me a tool to help guide my students through analogistic reasoning, this tool allows me to show my students how different types of arguments would vary RAFADC’s application without the students getting too lost. For example, if the point involved evaluating a split of authority, more of the discussion would occur with the authorities portion of RAFADC; but if the

point involved determining if one's facts were within the scope of the rule, more of the discussion would occur in the 'FAD' portion of RAFADC.

While legal arguments are not formulaic, RAFADC provides me with a tool to use for beginning students who are unsure of how to construct a legal argument. Once the students become more comfortable with constructing legal arguments, they are prepared to experiment with the variation that makes legal analysis so interesting and creative.

RAFADC also provides me with a diagnostic tool that helps me be more effective when I am trying to help students understand why their analysis is incomplete or not objective. When I ask students to annotate an argument they have written, they can more easily determine what they need to do to improve. If, for example, they can only find the Rule and Conclusion parts of the analysis, they know that they must focus on developing authorities and facts in their analysis.

In the end, this tool is a successful aid for beginning students and helps make me a better teacher.

I ♥ IRAC?

DAVID J. JUNG
UNIVERSITY OF CALIFORNIA,
HASTINGS COLLEGE OF THE LAW

I ♥ IRAC? Order me the T-shirt, please: What could be more important than teaching law students, as soon as possible, that there is a basic unit of legal argument? In this, IRAC conveys a truth that is powerful, profound, and utterly misleading (in the way powerful truths usually are).

The powerful truth? That law is about rules. As anyone who teaches in the first year knows, that point can escape first year law students.

Watching us twist and turn the rules to our own purposes, puzzling over the mix of history, economics, politics and philosophy that works its way into the notes, lectures and discussions, students can lose sight of the rules altogether. IRAC brings them back to earth.

Unfortunately, the earth it brings them back to disappears under their feet. In the great first-year "gotcha," they learn that general rules don't decide particular cases. But IRAC neatly captures that, too. There's a gap between the R and the C. The rule can't give you the conclusion; the A, the application, has to fill it in.

So, how is IRAC misleading? It misleads in some trivial ways, first of all. For some reason, students always think that there is one I and one R for the whole problem. They miss the

point that every broad rule generates many sub-issues, and that every element of a rule deserves its own application. IRACs nest, they need to be told. And the C can be ambiguous: How one issue [C]onnects to the next can be as important in some [C]ontexts (exams, for example) as a [C]onclusion. And the A: Is "Application" the right word? Or would "arguments" better capture the give and take, the pro and con, the rhetorical character of legal reasoning?

Indeed, the real problem is with the A. If rules don't decide cases, what does? "Application" connotes something difficult, but fundamentally mechanical: "If you'd just apply yourself, dear". Whatever school of legal philosophy one subscribes to, something outside¹ the rule—the reason for the rule, principles, policies, the judge's breakfast—must come into play. IRAC suggests a closed system, and in that way it misleads. The application has to take you outside the issue and outside the rule if it is to get you to the conclusion. In the spirit of the acronym, perhaps it should be expressed graphically:

REASON
PRINCIPLE
OMELETTE
IRAC

In this respect, IRAC can be valuable precisely because it is misleading. Because it suggests a mechanical process that doesn't exist, it frustrates students, and because it frustrates them, it gets them thinking. Thinking about what's wrong with IRAC got me to thinking about the nature of law and legal reasoning,² perhaps it can do the same for the students.

¹ By "outside", I simply mean not expressed in the statement of the rule itself. As to whether it's outside the rule or the law in any other sense, I take no position.

² Admittedly, making a grocery list can get me thinking about the nature of law and legal reasoning.

IN DEFENSE OF IRAC (AS FAR AS IT GOES)

JOSEPH KIMBLE
THOMAS COOLEY LAW SCHOOL

[Author's note: Recently, some of our faculty members have circulated memorandums about IRAC. Below is my response to one of the memorandums.]

I think we should keep in mind that IRAC is just a structural outline. What makes it or breaks it is the execution. Unfortunately, students often use it in a mechanical way: state a rule; recite some facts; and jump to a conclusion, without weaving the rule and facts together or showing how they lead to the conclusion or considering facts that may point the other way.

What we need to concentrate on is how to work through the R and the A parts of IRAC—which, by definition, every legal problem involves.

Anyway, here's the memorandum that I circulated.]

I agree with much of what [X] said in his recent memorandum about grading. And I'm glad to see that he is hyphenating his phrasal adjectives: "hard-hearted bastards." But I think he is a little too hard on IRAC.

To begin with, IRAC at least provides a structure for legal analysis. Second, IRAC does capture the essence of what is involved in legal analysis: applying legal principles to facts (the R and the A parts). Third, I'm sure that IRAC, done fully, can produce an A answer.

When [X] says that IRAC represents no more than base-level competence (a C or a C+), I believe that he has in mind the application of clear rules to fairly clear-cut facts.

- An offer is not valid if the offeree should have known it was made in jest.
- Smith should have known that the offer was made in jest, because Jones was drunk when he made it and because the offer of \$500 for the shirt off Smith's back was too good to be true.
- So the offer was probably not valid.

I'd say this is the narrow view of IRAC. In my mind, it involves more.

Issue: You have to identify not just the broad issues ("Did Wilson obtain title by adverse possession?"), but also the sub-issues ("Was the possession hostile, or adverse, when Wilson did not know that the fence was on her neighbor's land?"). In other words, you may need to use IRAC several times to answer an essay question. You might not always state the issue explicitly; but every time you apply a rule, there is the implicit issue of whether or how that rule applies to the facts.

Rule: You have to know the rules — in all their subtlety and with all their exceptions and variations. You have to know the rules that explain the rules: that is, any definitions or tests. ("The plaintiff's person may include anything that is connected to the plaintiff's body.") And you have to know the policies behind the rules if the professor emphasizes the policies.

Application: You have to apply the rules not just to the obvious facts, but to the facts that are in between or at the margins. You have to be able to deal with vague terms ("foreseeable," "reasonable time")—again, by using a definition or a test; or by analogizing to the cases you studied; or by weighing the factors that the cases set out;

or by at least using common sense. You have to consider whether the policy supports applying the rule. You have to be able to argue in the alternative (“On the other hand ...”). And you have to include all the logical steps.

Conclusion: You have to answer the question. Very often, you have to give alternative answers.

One example. With help from the Property professors, we give a finders question as practice in Legal Methods [Thomas Cooley’s first-term survival course]. The question involves a majority rule and a minority rule. Even the majority rule has three possible exceptions, and students have to apply all of them. One of the exceptions involves the distinction between a public place and a private place. The facts are set in a hotel room. We expect students to argue it both ways, and we expect them to see that treating the room as a private place will better serve the policy of getting the item back to the true owner.

All of this is IRAC, and I’d say, again, that doing it well can produce an A answer.

WHETHER OR NOT TO USE IRAC: CAN WE DRIVE WITHOUT THE RULES OF THE ROAD?
JOYCE DEATRICK KLOUDA
DEPAUL UNIVERSITY COLLEGE OF LAW

Imagine you are learning to drive an automobile for the very first time. The driving school instructor lets you get in the car, gives you the keys, and tells you “Drive!” No learner’s manual comes in your language, and only the driving school instructor possesses a copy of and knows *The Rules of the Road*. This scene parallels the confusion, frustration, and lost feeling students would experience in their first year of law school if legal writing instructors avoided using IRAC (the acronym for Issue, Rule, Application, Conclusion) as a tool for teaching analytical method.

Rather than ask whether or not legal writing instructors should avoid using IRAC because it fails to fit every purpose and goal in legal writing, I recommend that we use this model to provide students with an introductory system, to identify, isolate, and describe the law, whatever the topic, in a coherent and logical manner. This gets the car started and gets it running in the right direction, and on a road with a destination in mind.

IRAC serves its purpose. The organizing concept of IRAC is simplistic, but necessarily so. IRAC focuses on the essential categories of information provided by case law, and assigns a logical priority to each of those categories. The priorities are understandable, the categories,

identifiable. Once understood and identified, IRAC allows students to create simple, sound, and congruent analyses; it allows the novice driver to steer a straight course in city traffic.

Additionally, this skill, the ability to analyze with simplicity, serves a broader purpose for the student. This IRAC-prompted skill allows the student to evaluate and assimilate substantive course work. The IRAC model provides students with a method to organize the plethora of case law that bombards their thoughts during first year like so many billboards along the highway. IRAC enables students to give vast concepts meaningful form. And so, the highway stretches before them.

But even these purposes pale against the effect of students and lawyers learning to write clearly and plainly. The complex nature of law absolutely requires this. IRAC helps the profession attain this essential goal by training new lawyers with a straightforward method for approaching any type of legal issue. IRAC, as a model for analysis, enables lawyers to state only concepts essential to one issue at a time, and provides a practical limit to the discussion of both simple and complex issues.

While IRAC alone will not, by definition, produce sophisticated analysis, IRAC is not intended to accomplish that result. For a beginning legal writer, much as a beginning driver, the immediate need is to acquire knowledge and a method for retaining that knowledge. If IRAC fails to provide a model for all types of legal analysis, this is not to say that IRAC fails; rather, we can enhance IRAC, as a model, to include more sophisticated categories and classifications. Integrating other levels of analysis within the IRAC model merely proves that the simple model served its purpose in taking the novice to the more sophisticated level.

I firmly believe that since the learner’s manual comes in a language completely foreign to that new driver, but that the driver must get behind the wheel, the new driver needs the instructor’s version of *The Rules of the Road*. The language of the law, likewise, and the methods of analyzing, are not familiar to first year law students. We let them on our highway of information by teaching them legal analysis, not by bombarding them with case after case, class after class, but by using IRAC to help them put the form with the substance.

In three years of teaching legal writing, I have described the concepts embraced by IRAC in numerous ways, trying to provide that learner’s manual in the right language. In all that time, and with all those words, the essential or core concept of analytical structure remains

constant: Issue, Rule, Application, Conclusion.

OUR PERSPECTIVE ON IRAC
CHRISTINA KUNZ & DEBORAH SCHMEDEMANN
WILLIAM MITCHELL COLLEGE OF LAW

Properly understood, IRAC is a useful tool, not just for first-year students but also for lawyers. (Of course, in teaching first-year students, we should be working on tools that will be useful to them when they become practicing lawyers.) This short essay describes why IRAC is useful and how it should be understood.

IRAC is a useful tool for three distinct reasons. First, in its emphasis on the progression from a rule to application of that rule to facts, IRAC is a simple representation of deductive reasoning. Deductive reasoning is, of course, common in non-legal disciplines and daily life. It is also the mainstay of legal analysis.

Second, IRAC is a translation of a classic writing principle to the legal context. That principle is topic / elaboration / conclusion. The I in IRAC corresponds to topic, R and A to elaboration, and C to conclusion.

Third, IRAC is a strong mnemonic. We should not forget that students need to be able to remember the skills we are working on; mnemonics aid retention.

How should IRAC be understood? As we teach IRAC, we emphasize its flexibility. For us and our students, the letters carry the following meaning:

Introduction: which may be an issue, transition, topic, thesis, or conclusion;

Rule: which reflects the nature of the law involved and thus may entail, for example, a quote from a statute, a statement of a leading case, or a synthesis of several cases;

Application of the rule to the client’s facts: which reflects the nature of the material and thus may be a fairly straightforward application of the elements of a rule or may be an extended case analogy;

Conclusion: which may also include a link to the upcoming topic.

Incidentally, we use the term “application” for A, rather than “analysis,” so students realize that the entire IRAC sequence contains analysis. Lurking in the rule or application segments may be a discussion of the policy behind the law and its significance for the client’s situation.

We teach students that a wide range of options are subsumed within this broad IRAC template. Some IRAC discussions take only one paragraph; others run pages. On occasion, for

good reasons, a discussion will skip or repeat a letter. For example, the introduction can be skipped if the rule can carry that message. The rule and application can be merged if the rule applies in a very straightforward way to a set of facts. If the rule contains multiple distinct elements, each element has its own rule-application-conclusion sequence between the introduction and ultimate conclusion. The same repetition may occur when the analysis contains a branchpoint, due to uncertain facts or ambiguity in the applicable legal rule.

Sometimes, the IRAC template need not (or perhaps should not) be followed. For example, some analysis may not entail application of a rule to client facts; an example is discussion of how to reconcile two conflicting bits of evidence or how to proceed in the absence of facts on an important point. As another example, in persuasive legal writing, it may be strategic to discuss the client's facts first and then "back into" the legal rule, where the facts are more compelling than the rule.

In summary, IRAC can be taught so that students understand not only why it is useful as a thinking and writing tool, but also that proper use of it requires judgment and creativity. When IRAC is presented this way, it can serve first-year students well as they study legal writing. And they will operate accordingly, even without being aware of its influence, during their years as practicing lawyers.

IN DEFENSE OF [F]IRAC
SALLY ANN PERRING, ESQ.

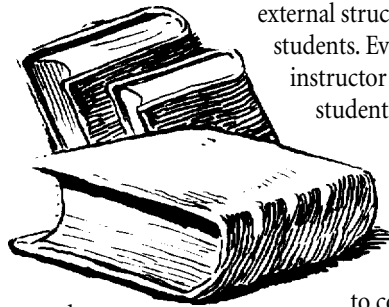
FACTS: Legal educators have promoted IRAC as the paradigm for the organization of legal analytical prose in many law schools. The method requires students to articulate the particular legal issue in light of the relevant facts; recite the applicable legal rule(s); analyze the facts in light of the rule(s), perhaps comparing and contrasting facts of other cases decided under the same or similar rules to the facts under consideration; and, reason to an articulated conclusion supported by the analysis.

ISSUE: Whether IRAC is a helpful tool for teaching analysis.*

RULE: A method that provides a logical, objective structure for analytical prose will be a helpful tool in teaching legal analysis.

ANALYSIS: Many bright law students come to their law school classes innocent of any knowledge of formal logic or how to structure an

effective written argument. Scantron tests and beautiful, intuitively argued essays or papers at their undergraduate institutions have not prepared students for the rigors of legal analysis. Initially imposing the [F]IRAC structure on the overall organization of student analytical prose forces students to sift relevant facts, isolate the legal problem in light of the operative facts and then proceed syllogistically to a conclusion. The "RAC" of [F]IRAC captures the paradigmatic logical syllogism—All men are mortal; Socrates is a man; therefore, Socrates is mortal. "All men are mortal" represents the Rule; "Socrates is a man" must be shown by factual Analysis; "Therefore, Socrates is mortal" summarizes the Conclusion reflecting an application of facts to the rule. Students who successfully mimic the [F]IRAC structure will necessarily have a sound logical structure to their analytical prose.



Also, [F]IRAC provides an objective, external structure for the students. Every legal writing instructor has experienced students who believe themselves accomplished prose writers or, conversely, students willing to concede they may have something to learn, but have no idea where to start. Legal analytical prose can be presented to "accomplished" writers as a separate species of writing with its own, objective structure—[F]IRAC. Students will not then perceive instructor comments on their papers as indicating whether the student's writing is "bad" or "good", but only how closely the student has conformed to the objective standard. Criticism becomes more palatable.

For students with serious writing problems, [F]IRAC operates as a good place to begin working on their prose. The compartmentalization of each section required by [F]IRAC helps to focus the efforts of struggling students. It makes legal analysis ultimately obtainable. Also, as an instructor, I will have some objective idea what students ought to have been discussing when I comment on their paper.

Thus, [F]IRAC provides both a logical and an objective structure for legal analytical prose.

CONCLUSION: As [F]IRAC provides a logical, objective structure for legal analytical prose, it is a helpful tool for teaching analysis.

Tongue in cheek aside, I firmly support (and actively preach) the [F]IRAC method. I feel fairly confident in saying that I have not squelched any incipient Cardozos or Frankfurters by requiring my students to begin their legal writing careers entombed in [F]IRAC. I do know I have given many lawyers the basic tools of effective legal writing so that they may competently communicate with and represent their clients.

I do acknowledge that [F]IRAC has its limits (though the meaning of "potentially harmful trap" eludes me). But, having worked almost 9 years at an appellate court and having read 100's of briefs and memoranda of points and authorities, my experience leads me to conclude ineffective legal prose suffers more from lack of cogent, logical support (which [F]IRAC would provide) than any limitation imposed by the [F]IRAC method.

* While I don't want to be persnickety (and I hate it when people do this to my prose), the issue as framed in the notice I received—"Whether IRAC is a helpful tool for teaching analysis or is a potentially harmful trap"—may not logically operate as a single issue since the alternatives (helpful tool and potentially harmful trap) are not mutually exclusive, aka the "Either/Or" fallacy.

IRAC: A USEFUL BEGINNING, BUT HARDLY A PANACEA
DIANA PRATT

WAYNE STATE UNIVERSITY LAW SCHOOL
IRAC is the basic organization for presenting legal analysis. That said, however, it is only useful if our students understand what each of the components includes or can include and how to select the options necessary to presenting the analysis of the particular problem to their intended audience. Without an understanding of the purpose, the audience, and the specific components, IRAC is an empty acronym.

The Issue section, although relatively short, is critical to the success of everything that follows and may be the most intellectually challenging part of IRAC. It is grounded in its purpose: objective or persuasive analysis, and its procedure: motion on the pleadings, motion for summary judgment, de novo standard of review, and so forth. In briefs and persuasive memoranda, the theory of the case should influence the issue statement.

The R of IRAC is a useful general organizational tool. With complex rules, however, the organizational challenge is within the Rule section. It can include provisions from legislative law: constitutions, statutes, regulations. These provisions may include operative

sections as well as definitions. The basic principles can also come from the common law. General rules may be composed of elements, each of which may need further definition from a legislative and/or case source. A general rule section of IRAC's R may also include a discussion of the potential legal standards or tests that could be applied to the case with the reasoning and policy for adopting the one and rejecting the other. The R section often includes holdings from cases to illustrate facts that are or are not sufficient to meet the legal standard. The scope of the Rule section is dictated by the problem; it may be one sentence or pages of an appellate argument.

The Rule section should set up the focus and organization of the Application section: the analogies, distinctions, and reasoning. This section is the logical 'stuff' of lawyering, the difference between the A and the C law school examination. The depth of explanation required to convince the audience depends of the purpose and the issue. The "A" of IRAC does not convey what is required.

If the Application section is well focused and complete, the Conclusion will follow inevitably.

IRAC is a useful, if limited, organizational tool. Early on, it helps students organize the issues. Later, it is the starting organization. A panacea it is not.

IRAC, THE LAW STUDENT'S FRIEND OR FOE: AN INFORMAL PERSPECTIVE
ELLEN LEWIS RICE, DONNA CHIN,
BARBARA HOFFMAN, CARMEN BARBAZON, &
LINDA FUREY

SETON HALL UNIVERSITY SCHOOL OF LAW
At Seton Hall University School of Law, legal writing teachers and teachers of so-called "substantive" courses have often discussed, and sometimes hotly debated, whether teaching legal analysis through the IRAC method is beneficial or counterproductive for law students. In our community, as in most others, few agree on the answer to that question. Although we have never surveyed the full faculty, we can reflect on the informal conversations we have had. In short, many of us feel that teaching students legal analysis by incorporating the concept of IRAC is useful. However, relying on IRAC alone is insufficient.

Many, if not most, first year students struggle with first understanding, and then employing, principles of legal analysis. The multi-step process involving issue identification, rule articulation, rule to fact application, counter analysis, and conclusion is often confusing and frustrating to the novice lawyer. When the

expected skills of authority synthesis and policy analysis are incorporated into that mix, the student may be overwhelmed by the many intricate and sequential steps required for thorough legal analysis. A student's sense of overload is doubtless exacerbated by the many new and difficult theoretical concepts he or she is required to absorb in the non-writing classes. The unfortunate result can be the student's failure to grasp the essentials of legal analysis and the inability to put those essentials to work in class and in exams.

IRAC is helpful when used as a device to break down and simplify the explanation of the process of legal analysis. The short acronym is an effective reminder of both the sequence and the basic steps of analysis. IRAC can be easily charted; it helps the student visualize the process. However, IRAC itself is overly simplistic and without question incomplete. The teacher who relies on IRAC exclusively does a disservice to his or her students by failing to give the student the whole picture.

The missing pieces from the IRAC picture are the essential components of authority synthesis, alternative (or counter) analyses, and policy analysis. Although the "R" of IRAC reminds the student to identify the operative legal rule, generally the operative legal rule is not singular, but an amalgam of several rules, interpretations and variations of those rules. Students must be taught that this authority synthesis is part of basic legal analysis.

So too, the student needs to know that the process of legal analysis is incomplete without an examination of alternative lines of analysis. Application of rules to facts usually presents more than one possible approach; sound analysis requires the lawyer to review and evaluate these possibilities.

Policy is another important factor that IRAC omits. Although policy considerations may not exist for every legal problem, law students and practicing lawyers still need to think about whether policy does or should play a role.

The skills of synthesizing legal authority, examining alternative lines of analysis, and assessing policy must be incorporated into any curriculum teaching legal analysis. To the extent an acronym is helpful, there are several possibilities.

The acronym IRAAPC can be used instead of the more simplistic IRAC. IRAAPC incorporates the essential elements of "Issue," "Rule," and "Application" of the rule to the facts, but also includes "Alternative analysis" and "Policy," as well as "Conclusion."

IRAAAP is a variation which we have found particularly helpful with students who are not totally confounded by the process of legal analysis, but who are not yet wholly comfortable with their skills. By using IRAAAP as a teaching tool, the writing instructor reminds the students to:

- 1/ state the "I"ssue;
- 2/ articulate the principal governing "R"ule of law;
- 3/ demonstrate "A"uthority synthesis - or, in other words, explore how the the governing rule has been interpreted and integrated with other related authorities;
- 4/ "A"pply the authorities to the facts of the case;
- 5/ examine any viable lines of "A"lternative analysis; and
- 6/ assess the impact of applicable "P"olicy.

IRAAAPC can be used as a variant of IRAAAP to add the element of "C"onclusion.

For persuasive writing, or where the writer wants to set forth a conclusion first, the model CRAAP or CRAAAP works well. There, the conclusion is given first, followed by the other elements discussed above.

Without question, as a teaching tool, IRAC is imperfect. However, for the beginning law student or the student who finds that developing the skill to analyze legal problems does not come easily, IRAC, or one of its variations, functions like an anchor in a stormy sea - it gives the student a concrete, formulaic approach to visualize and implement the steps necessary to find one's way successfully through a legal problem.

LE GRAND BUFFET
ANITA SCHNEE
UNIVERSITY OF ARKANSAS SCHOOL OF LAW

How can you state an Issue, much less Conclude it, before you grasp the underlying construction of the argument? Surely the "I" and the "C" are the knives and forks on either side of the meat (the tofu, for the vegetarians) and potatoes of the argument: The Rule and its Application. I think it makes sense to emphasize "RA" over "IC" at every stage of the analysis: From reading cases, to briefing them, to identifying the legally relevant facts in the precedent cases, to identifying the legally relevant facts in the given situation. Only then, after all that work has been done, does it make sense, at the writing stage and even at the latter stages of the writing, to add the "I" and "C."

To push the dining metaphor further, "RA" is the shopping, standing in line, cooking, and scouring involved in preparing the banquet. "IC" is setting the table for the guests.

Relentless emphasis on RA as a teaching and organizing tool can also serve our students as an entry-level cookbook. There's no sense in our students trying to be Martha Stewart if they don't know to cook the putative mashed potatoes before putting them in the blender.

For example, suppose a plaintiff got HIV from sexual contact with an AIDS-positive person who knew but was silent and did not use protection. Negligence cause of action against the carrier? There is no law on these precise facts in the jurisdiction. (These facts have been taken from Jan M. Levine, *Analytical Assignments for Integrating Legal Research and Writing* (1994-95).)

1. Read a genital herpes transmission case and extract the general Rule (duty to warn or refrain from conduct exists if highly likely that known harm would result).
2. Identify the Application to the facts of the case (duty to warn/refrain exists because highly likely that genital herpes would be transmitted by sexual contact with active carrier).
3. Read another case, on fear of transmission of AIDS through invasive surgery, and extract its refinement of the general Rule (even if known harm would be an unlikely result, and feared harm does not actually occur, duty can exist if the risk posed is unreasonable).
4. Identify the Application (merely a "theoretical possibility" that AIDS would be transmitted via invasive surgery, but, because of known dire consequences, the risk was unreasonable; AIDS-positive surgeon had duty to inform patients or refrain from surgery).

Now, after this preparation, begin to write (cook). Craft the "RA" for the facts to be analyzed:

1. State the general Rule (likely known harm, but if unlikely, reasonableness, even if feared harm does not transpire). Refine the Rule with examples of how it's been Applied (likely result with herpes; unlikely with surgery but unreasonable risk; duty found in both cases).
2. Identify the facts of the case at hand, to which the Rule, Applied, will reach the Conclusion (like herpes case, highly likely that HIV transmitted by sexual contact with AIDS positive partner; risk is, therefore, even more unreasonable than that posed in surgery case).
3. Conclusion is now apparent: Duty and then some.
4. Issue is now apparent: State the cause of action, sketch in the Rule, supply the legally relevant facts (which have emerged by matching them to the command of the Rule and its

Application in prior cases), and ask the question. Conclusion has become obvious.

Invite the guests. Pay the help. Bon appetit.



BETWEEN IRAC AND A HARD PLACE¹
THOMAS H. SEYMOUR
SUFFOLK UNIVERSITY LAW SCHOOL

It's the sometimes bitterness of the debate between the defenders and opponents of IRAC that surprises me. IRACophiles and IRACophobes are of course both right and both wrong. IRACophobes often dismiss its value as an expository tool, while IRACophiles, for whom every problem in legal analysis is IRACable, miss the value of other analytical approaches.

Like most of us, IRAC's strength is also its weakness. Legal studies are far more indeterminate than students want or expect. So they huddle on their little rafts of certainty as the sharks of complexity and doubt circle closer and closer. This is IRAC's appeal: it's the "black letter" of legal writing. It's a clear, simple, handy format, easily explained to and understood by first-year law students, and into which most legal analysis can be molded to fit reasonably well. Students who learn it are freed to spend more time puzzling over the relevant law and its application to the facts of their case, because they need to spend less time worrying about how to "package" their analysis. For this reason, IRAC is the default format of choice for exam writing, especially for "issue spotter" questions. Time is so precious during an exam. Better to employ that time thinking about answers than answer formats.

But IRAC's siren song may be too appealing, too comforting. Its form, if we're not careful, turns into function. Not all legal analysis reduces to issue spotting. Yet for many students, subtleties, nuances, difficulties in analysis disappear if they can't be boxed swiftly into IRAC's neat formulation. When IRACian students make up their minds how the law applies to facts, they can undervalue opposing views. IRAC pushes students toward answers rather than arguments. IRAC is sleek and efficient; once "Issue" emerges, "Conclusion" ever beckons. Other common analytical approaches, such as "argument-counter argument-rebuttal," may be more lumbering and repetitive than bullet-quick IRAC, but they force students to confront the fallibilities of their analyses in ways IRAC may not.

IRAC is a useful device for explaining the law and its application to facts—no small matter. Explanation and understanding, however, aren't identical. The journalist A.J. Liebling prided himself on being a better writer than anyone faster and a faster writer than anyone better. Much the same might be said of IRAC. As an analytical and expository tool, IRAC may be deeper than anything clearer and clearer than anything deeper. But it's doubtful that IRAC pushes students to develop both the deepest and the clearest analysis and exposition of the law that they can.

You know the old saying: To the man with a hammer, whatever sticks up is a nail. Sometimes IRACophiles remind me of the hammerman. And sometimes I think that IRACophobes forget just how many things that stick up really are nails.

¹ This title doesn't really have much to do with the following remarks. However, ever since Medb Sichko, my colleague at Suffolk University Law School, handed me this phrase, I've not been able to put it down.

IRAC RESPONSE
JACQUELYN H. SLOTKIN
CALIFORNIA WESTERN SCHOOL OF LAW

I have found the IRAC formula to be a helpful tool for teaching basic analysis skills especially to my legal analysis students who participate in California Western School of Law's academic support program. Selected students (minority, diversity, low index, ADA, second-career) arrive two weeks before the start of their first semester for our Academic Success Summer Program. In two weeks, students begin to learn the process of legal analysis and legal writing. After five years of teaching in the program, I have given the IRAC formula my own twist.

My basic formula is IRAAC(P). This acronym means: Issue; Rule; Apply/Apply (the double-A to stress that students need to focus on all sides of analysis in applying the law to the facts — similarities, differences); Conclusion (students need to answer the question asked before moving to the next issue); and Policy (the policies and justifications supporting the AA of that issue). Following this formula enhances and ensures a logical discussion of each legal issue.

I have found the formula valuable for teaching students to sequence issues for discussion in memo writing and in exam writing. In Legal Analysis (now called Legal Process), first semester students continue to develop their analysis skills using IRAAC(P). I encourage all students to review and critique their own papers (practice exams, memos). I suggest they go

through their papers and mark every I, every R, every AA, every C, and every P in the margin. Everything in the paper should be marked with one of these letters and in that order.

I have found IRAC to be a helpful tool for teaching legal analysis, though I've added additional concepts to the formula. It is logical and helps students to organize thorough and comprehensible discussions of legal issues.

THE CONTINUED VITALITY OF IRAC
NANCY SOONPAA
ALBANY LAW SCHOOL

Is IRAC— issue, rule, application, conclusion—a helpful tool for teaching legal analysis; overly simplistic, requiring that different or additional concepts be added; or insufficient in scope to encompass all legal analysis? Yes, it is.

The infamous IRAC is a common mantra chanted by first-year students convinced that it is the secret to success in legal analysis. After all, understanding and using IRAC will produce at least a veneer of competency in analyzing legal issues. But from the perspective of those trying to teach beyond competency in written analysis, IRAC has both strengths and limitations.

First, why not simply acknowledge the usefulness of the structure set out by IRAC:

- Issue: Students' first piece of writing for law school, the case brief, confronts them with the new and puzzling issue statement. Identifying a case's focus and distilling that into an issue is an important skill. As professionals, attorneys write office memos, trial briefs, and appellate briefs, all of which contain an issue statement or question presented providing a focal point of the analysis.

- Rule: Given that legal reasoning is rule-based, the importance of understanding and conveying rules that will control the analysis is a logical step to follow the statement of the issue. Rules may be rules only or supplemented by analogous case descriptions and source information, but setting the limits of the discussion provides the necessary link between the issue that precedes and the application that follows the rule.

- Application: Once the issue and the rule are set, the application of the rule to the facts — analysis — necessarily follows. Every legal writing professor has seen student work that omits any integration of the two and leaps merrily to a conclusion. Just as junior-high students are exhorted to "show their work" in algebra class, so must law students be able to

show their reasoning as they moved from the rule to the conclusion.

- Conclusion: Explaining the outcome is the logical and final step to the IRAC progression. Application is insufficient without some definitive prediction to wrap up the analysis. Even if the organizational scheme precedes the application with the conclusion to be reached, an additional overall conclusion is usually included.

So is IRAC a helpful tool for teaching legal analysis? Several popular legal writing texts refer to IRAC as a good basic organizing device. See Charles R. Calleros, *Legal Method and Writing* 58-60 (2d ed. 1994) (ultimately cautioning against oversimplification from excessively mechanical application of IRAC); Laurel Currie Oates et al., *The Legal Writing Handbook* 510 (1993) (in reference to pp. 165-69) (noting that there is no need to reinvent the wheel when a basic and accepted scheme such as IRAC works); Helene S. Shapo et al., *Writing and Analysis in the Law* 106-07 (3d ed. 1995) (showing organization of single legal issue that follows IRAC-like scheme).

For example, IRAC can be useful as a broad organizational scheme for an office memo. A memo typically sets out the facts, question presented, and brief answer (issue); an introduction with general rule and roadmap (rule); the application-of-law-to-fact section (application); and a general conclusion (conclusion). Moving on to a smaller-scale of organization, the writer still can use IRAC. Each smaller issue is organized with some brief statement of issue (introduction to sub-issue), rule (rules, support, synthesis of analogous cases), application (application of law to fact), and conclusion (mini-conclusion to sub-issue or as a preliminary assertion to the application). Even some paragraphs use IRAC organization, with the topic or thesis sentence stating the issue, the rule and application rolled together, and some explicit or implicit conclusion.

However useful IRAC can be, however, is IRAC also overly simplistic, requiring different or additional concepts to be added, or insufficient in scope to encompass all legal analysis? Again, yes. One author goes so far as to label IRAC useful for exam-taking, but ineffective for memoranda and briefs. Richard K. Neumann, Jr., *Legal Reasoning and Legal Writing* 231 (2d ed. 1994). Even in the preceding paragraphs supportive of the IRAC format, an element sometimes needed expansion in order to serve the purpose of the piece of writing (the rule may be expanded to include support and analo-

gous cases, for example, see *id.* at 83-86 (expanding rule to also encompass proof of rule)), or modification of the order, see *id.* (using conclusion based on issue preceding application).

Thus slavishly following the IRAC model does not guarantee effective and complete analysis. It works best as a writing model either to beginning or to advanced legal writers. A novice writer relying on IRAC as a guiding organizational principle will write a better first memorandum than someone who tries to organize information without using the strategy. IRAC is also useful to the experienced writer as a general guide to ordering information and as a basis for creative manipulation, once the writer has internalized the purpose of analysis and the document being written. However, an intermediate writer might have trouble stepping away from IRAC, not yet having the confidence or the insight to defy convention. For instance, imagine paragraph after paragraph, each written strictly IRAC-style. Or imagine a complex legal issue with a balancing of competing interests, written by a writer clinging to classic IRAC in the analysis.

Thus the best "rule" for the continued vitality of IRAC is that it should not be taken too literally, but that it can be used a strong tool for teaching effective analysis. As long as the writer understands that each part of the four-part scheme may need some redefinition, expansion, or reordering and that smaller scale applications may contain some implicit components, IRAC can provide a useful basic scheme on varying levels of scale and complexity to strengthen the organization of legal writing.

THOUGHTS ON THE USE OF IRAC IN
TEACHING ANALYSIS
NANCY P. SPYKE
DUQUESNE UNIVERSITY LAW SCHOOL

Over the several years that I have taught first-year legal writing, I have decreased my reliance on IRAC for teaching analysis. Not only have I given it increasingly less prominence, but I have altered its placement within the first semester as well. The reason for this shift is what I call the "quick fix phenomena." Out of a predictable sense of anxiety, first-year students are attracted to anything that appears to be a quick fix, especially if it's given credibility by a faculty member. Most of us would agree that it would be disastrous to present IRAC as the beginning and end of successful legal writing. But because of the quick fix phenomena, I also believe that the results can be nearly as disastrous if IRAC is introduced to novice legal writers early in the

first semester as a foundation upon which to build a strong legal analysis. Students will tend to embrace IRAC with all their might and never let go. Once the quick fix is in place, students will believe that they have learned enough to succeed in legal writing, and will focus their attention on other courses. Also, by the time they've managed to digest IRAC, they may well be attending bar review lectures and listening to tapes that expound the benefits of using that formula on exams. Again, students naturally will be drawn to the one solution that they feel will work for all their first-year writing, whether exams or memos. No matter how well-intentioned, an early introduction to IRAC as an analytical building block can, sadly, result in an incomplete analytical structure.

All of this is not to say that "IRAC" should never be uttered in the first-year legal writing classroom. Once legal writing faculty have presented a strong and flexible analytical framework to students for use in office memoranda, they can demonstrate the correlation between that type of sophisticated writing and the necessarily abbreviated analytical format that students must use for exams. When writing faculty introduce IRAC later in the Fall semester, they can emphasize that the legal analysis a senior partner expects in an interoffice memorandum is different from what a law school professor expects on an exam. Faculty can then reveal that IRAC is an adaptation of legal writing based on a change in audience, and students will see it as a capsulized version of the more sophisticated legal analysis they are attempting to master. As such, IRAC is less likely to become a quick fix; instead, students will see that it is an audience-specific mutation of legal analysis that has a limited application.

THE DEATH OF IRAC
MARK E. WOJCIK
THE JOHN MARSHALL LAW SCHOOL

The issue is whether to continue teaching IRAC to first year law students. As a rule, IRAC is generally a helpful model for efficiently communicating legal analysis. See, e.g., Diana V. Pratt, *Legal Writing: A Systematic Approach* 163 (2d ed. 1993). There are at least four reasons for IRAC's popularity and effectiveness. First, the IRAC structure forces the writer to articulate each part of the analysis of a legal problem. This sharpens the thought processes of young legal writers who, by correct use of the model, understand the function each sentence has in communicating ideas to readers. Second, using IRAC avoids omissions in analysis, either intentional or inadvertent. It is all too easy to

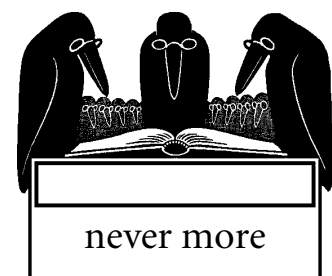
skip over an application of facts that is particularly difficult. Third, IRAC helps not only with memoranda for writing classes but with essay examinations. See, e.g., Charles R. Calleros, *Legal Method and Writing* 58-60 (2d ed. 1994). Students consequently obtain an additional benefit when they become comfortable with IRAC. Fourth, IRAC intrinsically appeals to students who may find comfort in an acronym. IRAC is a life jacket to young writers swimming in a sea of muddled ideas.

An application of IRAC shows that it is generally a useful tool for the "small-scale organization" or "fine organization" of legal analysis. See Helene S. Shapo, Marilyn R. Walter, & Elizabeth Fajans, *Writing and Analysis in the Law* 106 (3d ed. 1995); Pratt, *supra*, at 163. The model allows writers to identify the critical issue, to set out and explain the controlling rule of law, to apply the rule of law to the relevant facts, and to finish, in the words of the late Dean Noble Lee, with a "decisive utterance" that concludes the analysis of an individual issue.

An alternative analysis of IRAC, however, shows that the model may not always be adequate for every issue. Young writers who do not understand the parameters of the "R" may cite a rule without giving adequate explanation of its reasoning. Often it will not be necessary to give any explanation of a rule of law, but this is more often the exception than the rule. The reasoning for a rule of law is as important as the rule itself. Similarly, IRAC may fail in the application of facts if a writer neglects other feasible applications that adversaries will raise as counter arguments. This may be because students remember "A" as "analysis" rather than "application of facts to the rule of law." With "analysis," young writers may consider only those reasons that support the conclusion reached. With "application of facts," young writers may remember that there are two possible applications: one for the plaintiff and one for the defendant. Both must be considered, unless the application of facts for one side fails what I call the "giggle test." If a reader would giggle at one side's alternative application of facts, the resulting arguments are frivolous and should not probably appear in the memorandum.

IRAC is consequently a useful "paradigm for structuring proof," although it is not the only model available to writers. See, e.g., Richard K. Neumann, Jr., *Legal Reasoning and Legal Writing* 83-85 (2d ed. 1994) (it may be more desirable to start with the conclusion rather than the issue); see also Terri LeClerq, *Guide to*

Legal Writing Style 2 (1995) ("There is no static answer to any question of organization except that the writer's choice of organization should meet the audience's needs"). Having considered the relative merits of IRAC, I have concluded that IRAC is ultimately an incomplete and unsatisfactory model. Instead of teaching IRAC, I now teach IRRAC (Issue-Rule-Reasoning-Application-Conclusion). See, e.g., Peter Jan Honigsberg, *Legal Research & Writing* 96 (6th ed. 1992). By teaching the modified IRRAC instead of IRAC, I hope it will be easier for students to remember to include the reasoning of the rule. Perhaps I will later teach the model as IRRAAC (Issue-Rule-Reasoning-Application of Facts for One Side-Application of Facts for the Other Side-Conclusion) so that students will also remember to include the "counter analysis" as well. Another useful modification of IRAC, developed by Ardath Hamann at The John Marshall Law School, is REAC (Rule-Explanation-Application-Conclusion). Her model relies on the identification of issues earlier in the memorandum and from the inherent structure of the analysis. The "explanation" in her model is an explanation of the facts of earlier cases supporting the rule of law. In my own classes I present both IRRAC and Professor Hamann's REAC. I also teach students about Professor Neumann's model that starts with a conclusion rather than an issue (I call Neumann's model "CRAC"). Students may use any of the models in their writing, but only if they are consistent in using the model chosen throughout the particular memorandum. The model chosen should serve the ultimate goal of effective communication to the readers. Mixed models may distract readers from the writer's message.



IRAC—An Undesirable Formula

THOUGHTS ON IRAC
MARION W. BENFIELD, JR.
WAKE FOREST UNIVERSITY SCHOOL OF LAW
I had never heard of IRAC in 28 years of teaching until I came to Wake Forest in 1990. I have been outspoken in attacking the "tool" ever

since. I believe it has serious flaws. Its major flaw is that it encourages students to assume that there is a “Rule” which is clearly called forth by the facts so that all they need do is apply “the rule” to get the right result. However, very often the choice among rules is the hardest question presented and is the question which most needs analysis and discussion. Of course, the abler students would probably realize that and engage in the appropriate discussion, but the IRAC system does discourage that. That appropriate discussion usually includes significant reference to the facts of the problem, but the IRAC system encourages delaying discussion of the facts to the third step, “application.” Similarly, suggesting to the student that she first formulate the issue implies that as a matter of first principles there is an “issue.”

A second flaw is that the system encourages awkward, simplistic writing. I tell students that their model for good exam writing should be that of an opinion by a good judge: very few opinions by good (or bad-but more often bad) judges use an IRAC-type system. In connection with writing this letter, I just re-read the opinions by Cardozo in Wood v. Lucy and Jacob & Youngs v. Kent. Those I consider to be two great opinions. Neither of them has any aspect of the IRAC system. Cardozo does not start off by stating an issue nor is the second step stating a rule. The opinions are, rather, a mixture of facts, ideas, conclusions as to the facts, appropriate judicial reaction to the facts, common sense, etc. I hope that Cardozo would have received a good grade if the opinions had been written on a law school exam.

One may fairly say that we can't expect students to write like Cardozo, but we can tell them that such great judges are their models, rather than giving them a simplistic formula. In the five years I have been examining students who have been exposed to the IRAC method, my impression is that it is the weaker students who actually try to use the IRAC system with underlined headings, vis: Issue, Rule, Application. Conclusion. Better students know better even when their legal writing instructors teach the IRAC method. I also think that use of the IRAC system has not helped the weaker students: it has rather encouraged lack of thought.

There is, of course, a germ of truth in the IRAC method. An issue, a rule (or principle) and application, and a conclusion can be extracted from the Woods v. Lucy and Jacob & Young v. Kent opinions. But how unsatisfactory it would have been to have Cardozo write in that fashion. I expect that he would have felt it necessary to repeat the same comments in

several different parts of an IRAC opinion structure. If students engage in the necessary fullness of discussion, they too should often repeat observations in several different parts of the IRAC structure. More likely, in my experience, they just write a simplistic essay with a paucity of ideas. IRAC is antithetical to rich, thorough, thoughtful consideration of all aspects of a problem.

PUTTING THE MONOLITHIC TEMPLATE IN CONTEXT

RICHARD W. CRESWELL
MERCER UNIVERSITY LAW SCHOOL

Many years' experience in teaching first-year courses in Torts, Contracts, Civil Procedure, Legal Writing and Introduction to Law Study leads me to conclude that IRAC has very limited utility but great potential for misapplication when taught to first-year law students. Many years ago I quipped to a class of anxious first-years preparing for their final exam: “IRAC can spell the difference between failing and passing, but it's not good for much beyond that.”

Today, I regret that statement, but I believe the statement is accurate when IRAC is viewed as a method of structuring exam answers. While there are applications for IRAC other than as a template for exam essays, I think it is important to consider the impact that teaching or endorsing IRAC in other settings has on examinations. In fact, IRAC's chief incarnation in the law school world is as a method of writing exam answers. That is inevitably so because students collectively focus on examinations to a much greater extent than they focus on any one course and because most law school courses consciously examine legal analysis (at the level where IRAC is relevant) only in the examination context. Teaching the use of IRAC in Legal Writing or Legal Method courses, whatever its merits within those contexts, reinforces the persistent law student folklore that IRAC is the preferred structure for exam essays. IRAC, I believe, has a pernicious impact on students' exam performance, except perhaps as a means of moving a failing student into the range of marginally acceptable performance.

Exam essays with no structure whatever frequently result in failure, and the addition of even a flawed and inadequate formula such as IRAC often can provide enough structure to turn those failures into passing grades. The suggestion of IRAC to a failing student may provide structure and assist the student in integrating the law and the facts. The failure to relate the student's knowledge of legal rules and

policy to the facts of an examination problem is occasionally encountered as the chief problem of a failing student. When that student's chief problem lies elsewhere, of course, IRAC will not improve performance. Moreover, the imposition of IRAC formalism on the content of a top-of-the-class exam answer can transform it into a mediocre essay.

I regret my disparaging statement about IRAC because I did not provide my anxious students with any substitute for IRAC nor any explanation of its limited utility. Since that time, I have developed a brief guide for my first-year students on exam taking that seeks to remedy both of these failings. The process of applying rules to facts is, without dispute, one important component of legal analysis. The chief difficulty¹ with IRAC is that fact application is only one of the analytic processes inherent in legal analysis. Students' reliance on IRAC as the exclusive method of analyzing legal problems (and structuring exam answers) is particularly unsatisfactory because it allows only one answer to be given to the question “What is the law on this point?” (or “What should the law be on this point?”). In many, if not most, legal problems there is some uncertainty as to what rule of law is to be applied. This is especially so in situations where statutes or administrative rules are to be interpreted and applied, and IRAC fails miserably as a structure for discussing and deciding the meaning of text in statutes or administrative rules.

I try to teach my students the fact application process, but without an acronym and without rigid regimentation, and, in addition, what I call the “rule choice process.” By that I mean the consideration of whether rule formulation #1 or rule formulation #2 should be applied to the facts. Inherent in every rule choice process are two fact application processes (i.e., what result would obtain on the problem facts under each rule), but the focus of the rule choice process should be on the competing policies underlying each rule formulation and their relative merits.

The prevailing folklore in the subculture of first-year law students is that IRAC should be the approach to every legal problem and every exam question. For a professor to mention, endorse, or teach IRAC almost inevitably reinforces this misperception. The idea that every exam question (or every legal problem) can and should be analyzed on any single paradigm is a concept that is inconsistent with the rich heritage of common law case analysis and statutory interpretation. Productive use of any tool (or analytic method) can occur only if it follows identification of situations in which

that tool fits the task to be accomplished. A student armed with only an IRAC hammer tends to see every legal problem as just another nail. We need to equip our students with skills in using multiple tools (and analytic methods), the knowledge of what tasks each of those tools can accomplish, and the realization that there are varieties of legal analysis paradigms to address the great variety of legal problems. In the context of the prevailing first-year folklore and especially in the context of first-year students' anxious quest for a universal solvent, the introduction of one analytic method unaccompanied by disproportionate attention to others may do as much harm as good.

¹ Other difficulties include the placement of the conclusion at the end of the analytic process (and hence at the end of the essay rather than near the start) and the insistence that the analysis be "issue driven" rather than outcome driven, inadvertently teaching students to use a "mystery novel" style of writing essays and to approach legal problems from an unrealistic impartial perspective.

IRAC: A TRUE STORY
JEFFREY MALKAN
CHICAGO-KENT COLLEGE OF LAW

When I was in law school, a famous professor said that he would reward me with a good grade if I wrote an intelligent discussion of the law. He could not be any more specific, and I got the impression that further pursuit of that inquiry would be in poor taste. A few years later (pages fly from the calendar), a student tearfully begs me for some guidance on how to write her memo assignment. I tell her, as I had been told myself, to write an intelligent discussion. Unlike me, she is not satisfied by this advice, and demands that I reveal the secret of IRAC.

Years pass. (More pages fly from the calendar.) It is now 1995. Having thoroughly reconsidered the matter, I finally decide that I am willing to tell my students about the Iraqi approach. (Small joke to defuse the tension.) I explain that, consistent with IRAC, the reader is looking for two distinct things. First, an explanation of the law, and second, an application of the law. Therefore, I ask them to break the memo into these two parts with a clear transition between them. If I had a second chance with my student of long ago (she-of-poor-taste), I would say this:

Explain the law. Begin with your conclusion. Identify the blackletter legal rule — specifically, the elements of your cause of action or crime. Then identify the issue raised by your facts. What elements will be disputed in your case? Does the element-at-issue contain a legal standard, that is, a norm of social conduct (such as reasonable care, foreseeability, good

faith, probable cause, best interests of the child, exigent circumstances, extreme and outrageous conduct, etc.)? If so, does the case law provide any guidance for how to decide whether this standard has been satisfied? Specifically, have the courts recognized a series of factors? If not, can you synthesize a set of factors from the case law? Have the courts adopted a test? Is there a leading or seminal case which sheds light on the standard (e.g., taking an objective or subjective approach to the standard, explaining the social costs and benefits of the rule)? Have you discussed the threshold issue first? Have you made the relationship between element, standard, and factors clear to the reader?

Apply the law. For the second part of the memo, I teach the script or debate format. Assuming that the best way to predict a legal outcome is to assess the possible competing arguments, I ask the students to predict, first, what their client will argue, next, what their opponent will argue, and finally, what their client will respond. (Alternatively, what will the weaker party argue, and what will the stronger party respond?) Within this format, the students must learn to use case analogies, showing how the parties' arguments are supported by the case law and comparing their facts to the facts in other cases.

In conclusion, the approach I've just described satisfies the three elements required for a reasonably helpful answer to the question presented by my former student. First, it isn't IRAC. Second, it's in good taste. Third, uh, it tastes good?

IRAC
CAROL A. MULAC
CORPORATE LEGAL DEPARTMENT
PARKER HANNIFIN CORPORATION
CLEVELAND, OHIO

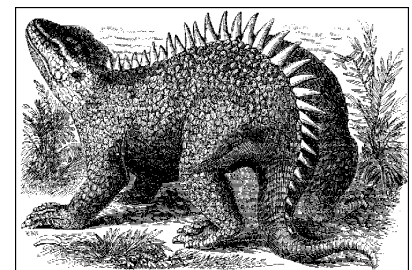
Your letter soliciting comments on the utility of IRAC was interesting. For three years I taught Commercial Law and Business Associations as an adjunct at Cleveland-Marshall. Both classes were taught from the standpoint of a practitioner (I am employed in the legal department of a corporation), and since IRAC is not used in practice, I never encouraged its use. As this letter will explain, neither the "R" nor the "C" gained students points on my exams.

My goal as a practical teacher was to help students develop the ability to analyze fact situations using legal principles. To this end, I made the legal principles as clear as possible, and drilled them in with repetition and by stating the same thing in a number of different

ways. I used the chalk board to outline concepts and provided handouts of the bullet elements. For example, in the first class of Business Associations students received a handout entitled The Big Picture which summarized on one page the concepts of the course. By the time a diligent student was done with the semester, there was no reason why they should not know what the legal "rules" (the "R" in IRAC) were. Thus, when grading an exam response, I cared not that the student could state the rule. What I looked for was whether the student was savvy enough to apply the rule to the facts, tying each element to facts, and positing different interpretations.

If case law was settled, then certainly a conclusion was in order. But most situations in real life do not present cut and dried fact patterns which fit settled case law, and so my exams were not structured to mirror settled case law. I did not care if a student reached a conclusion as to liability. I told my students that in practice, it would never or seldom happen than a client would present the ideal fact pattern on all fours with case law, and that they thus needed to learn to adapt the legal principles to varying situations. Rare is the practitioner who will give a client an opinion in the form of a legal conclusion. Much better to offer the client analysis, based on several different scenarios, offering an opinion of the probability of each. Conclusions are for the client to make, not the lawyer, and so conclusions were not rewarded on my exams.

Perhaps litigators will have a different view on the utility of the IRAC form of legal writing, but in my business classes, it was not encouraged.



IRACASSAURUS WRECKS
JILL J. RAMSFIELD
GEORGETOWN UNIVERSITY LAW CENTER

Long ago and far away in the prehistoric jungles, there roamed a giant, ferocious, and ravenous beast called Iracassaurus Wrecks. He was always hungry; he was always mangy; he was always right. No matter what wandered in

his path, he ate it. Smaller animals, tree branches, swift and subtle fish, even birds. He ate them. Fossils of his remains show that, similar to the modern-day shark, he ate nearly everything that came in his path. Creatures feared him. They respected him. They stayed out of his way. And they talked about him a lot. In fact, they talked about him incessantly. He was big, so everyone knew about him, everyone had seen him once, and many had spotted him several times. (Some knew others who had been eaten by him). He was easy to talk about because he had such clear features—only four, in fact. So everyone talked about those four features. There was his head, small but significant. It had the ferocious eyes that indicated his course; one flick of those eyes and you were gone. You knew just enough to know it was too late, the story went. There were his front legs, muscular and firm. Settled, synthesized into one powerful grasp, they left no guessing as to his intentions. These were not the many legs of the Inductactyl or the indeterminate legs of the Critixisoarus; no, these were the uncompromising legs of Iracassaurus Wrecks. Then there was his body. No one seemed to know much about that except that it was big. There was some thought that there were different species of the Wrecks and that the body varied, but those were odd rumors that no one could verify. No, there was just this enormous body that held, deep in its dark innards, samples of the entire ecological system of the time. Finally, there was the tail. Stubby, sharp, with pointed scales of an indeterminate color, it sometimes whacked lucky creatures whom Wrecks had overlooked. The blows were rarely fatal or even significant, but the fright alone was worth the telling. One day, no one knows exactly when, the last Iracassaurus Wrecks died. He had eaten so much that he became cumbersome, fat, really. He didn't fit in. Other creatures had evolved to move swiftly around him, like the Schematus Flexus, or to fly high above him, like the Analyticus Originus. He couldn't catch anything to eat. Tired, emaciated, he plopped over on the shore of a lake. His fossil shows that all his stomach held was a small dictafish.

IRAC RESPONSE

MANNING WARREN

UNIVERSITY OF LOUISVILLE SCHOOL OF LAW

In brief response to your request for comments on the “Issue, Rule, Application, Conclusion” (IRAC) approach to legal analysis, I suggest that one flaw in this structure is its failure to place the emphasis on the factual setting, as opposed to the legal setting, of the matter in controversy.

Thus students are asked to use their analytical faculties not to determine and think about what is really going on among a given set of players, but to mold printed facts into some form-fitted legal construct, i.e., let's find an issue and apply the rule.

The legal system, in practice, is simply not very determinative, and your proposal, similar to traditional approaches used for decades, forces unprepared students to learn the hard way, at the expense of their clients, that practicing law involves understanding facts first, “what happened” and the “how” and “why” of the mess that brought the parties to the last resort of dispute resolution.

Today's lawyers have to understand the problem before they ever assist others in its practical resolution. Consequently, for them to jump from issue to rule to application and conclusion is to fabricate a problem that fits the answer predetermined for them and set forth in the court's decision. In their practice, they have a factual problem before they ever get to the legal ones, and, of course, do not have the printed answer to guide their analysis.

IRAC UNNECESSARILY CONFUSES

ROBIN S. WELLFORD

WASHINGTON UNIVERSITY SCHOOL OF LAW

IRAC unnecessarily confuses and frustrates students because the acronym falsely implies that legal writers follow a rigid, concrete, writing pattern. Students eagerly grasp the implied safety net of a hard-and-fast rule only to become frustrated when they realize that the deductive analytical writing pattern IRAC reflects is fluid, changing to adapt to the particular set of cases and issues confronting a legal writer. IRAC's implied rigid structure confuses students on two levels. First, it falsely implies that there is only one statement of the “I”ssue, of the “R”ule, and of the “A”pplication of the rule to the client's situation. Second, IRAC falsely represents the relationship between the “R”ule and “A”pplication components of the acronym because it implies that all statements of the rule will physically appear in a legal discussion before any discussion of how the rule affects the client's situation.

The teaching approach we use resolves these problems. First, instead of teaching the acronym, we teach our students the basic concepts underlying IRAC. IRAC reflects the general concept that readers more easily understand information when they read context before details. With that understanding, students can perceive why a broad

statement of a legal rule provides the context for a precedent case's more detailed elaboration of that rule, and why the precedent case provides the context for a discussion of how the precedent case affects the client's situation.¹ This approach avoids the frustration and potential hostility students express when they discover that the concrete formula offered by the acronym is only illusory. At the same time, by understanding the rationale underlying format patterns, students can better apply that concept to other legal writing.

Second, we provide students with the actual deductive writing pattern options that reflect the interplay between the “R”ule and “A”pplication components of IRAC. These options provide genuine guidance to students because they accurately reflect the actual choices they are being required to make. Moreover, by describing for students the circumstances under which legal writers choose each option, students are empowered to know that they have real choices to make and that the selection of each choice is guided by reason and logic.

Legal writers have four basic writing options when discussing how more than one “key” precedent case affects the client's situation. The following is an excerpt from our course materials.

(a) Option 1:

Option 1 works effectively when an attorney discusses more than one case that explores a single issue and the cases illustrate and elaborate on the same legal principle and/or factors that are described in the thesis paragraph:

- Examine Case 1
- Examine Case 2
- Apply Cases 1 & 2 to client's facts

Test for viability of Option 1: After trying Option 1, review what you have written and ask yourself whether the discussion is clear and distinct or whether it is confusing. Option 1 can be confusing, even when two or more cases illustrate the same legal principle, if the facts of each precedent case engender different comparisons to the facts of your client's situation. Under those circumstances, the discussion of how cases 1 & 2 apply to your client's facts will have to flip back and forth between the cases — a confusing task for the reviewing attorney to follow. If the discussion is confusing, try Option 2.

(b) Option 2:

Option 2 works effectively when, although several cases explore the same issue, they either (a) illustrate different legal principles and/or factors of the single issue the attorney is exploring, or (b) illustrate the same descriptive principle and/or factors but are so factually distinct from each other that Option 1 would be confusing:

- Examine Case 1
- Apply Case 1 to client's facts
- Examine Case 2
- Apply Case 2 to client's facts

Test for viability of Option 2: After trying Option 2, review what you have written and ask yourself whether the discussion is clear and distinct or whether it is repetitive. If it is repetitive, that probably means the cases explore the same legal principles and factors and engender the same factual comparisons. If the discussion is repetitive, try Option 1 or 3.

(c) Option 3:

Sometimes an attorney will use a hybrid of Options 1 and 2. For example, if one group of cases affects the client's facts in one manner and another case or group of cases affects the client's facts in another manner:

- Examine Case 1
- Examine Case 2
- Apply Cases 1 & 2 to client's facts
- Examine Case 3
- Apply Case 3 to client's facts

(d) Option 4:

Sometimes the legal principle that resolves a single legal issue is comprised of several distinct factors. In that event, an attorney could use Option 2 or 3 or could attempt a somewhat more sophisticated approach that organizes the discussion around the factors rather than cases (this is a difficult format to do effectively):

- Examine Factor A, as illustrated by Cases 1 & 3
 - Apply Factor A to client's facts
 - Examine Factor B, as illustrated by Cases 2 & 3
 - Apply Factor B to client's facts
 - Examine Factor C, as illustrated by Cases 1, 2 & 4
 - Apply Factor C to client's facts
- Variation - Assume Factors A & B are interrelated but Factor C is separate and distinct:
- Examine Factors A & B, as illustrated by Cases 1, 2 & 3
 - Apply Factors A & B to client's facts
 - Factor C, as illustrated by Cases 1, 2 & 4
 - Apply Factor C to client's facts

Test for viability of Option 4: After trying Option 4, review what you have written and ask yourself whether the format is clear and distinct, or whether it is repetitive or confusing. If repetitive or confusing, the factors are probably not as distinct as you originally believed or the facts of your client's case are

too interwoven with the various factors to make a separate discussion of each factor very clear. If so, try another Option.

In conjunction with these materials, we have devised an exercise in which the students must compare an effective and ineffective example of a discussion illustrating each option. Through a series of questions, the students arrive at an understanding of the underlying conditions that make one example an effective use of that writing option and the other example ineffective. We also provide our students with sample office memoranda that use each option.

¹ Understanding that concept not only helps students make effective macro-format decisions, but effective micro-format decisions as well. For example, a topic sentence describing the legal principle a precedent case illustrates provides the context for the more detailed case discussion set forth in the rest of the paragraph; the case facts provide the context to understand the basis of the court's holding and reasoning; etc.



FROM THE DESK OF THE WRITING SPECIALIST

Close Encounters of the Word Kind: Focus and Flexibility in Student Conferences

by Mary Barnard Ray & Claudia M. Carlos



Have you ever realized, halfway through a lengthy explanation of organization in the tenth student conference of the day, that you have no idea why you started this explanation, and no clear sense of what it has to do with the passage in front of you at the moment? If so, be not ashamed. You are not alone. Few teachers can maintain the energy and attention needed without having occasional lapses.

Nevertheless, each student is unique and deserves the individual attention that a conference can provide. To maintain your attention, you need a simple yet organized approach for each conference. That need is the motivation behind the approach we use, which can be summed up in one phrase: focus and flexibility.

Focus and flexibility are clear enough concepts, but how these concepts play out in real conferences is fairly complex, as the following conference scenarios illustrate. We have included five excerpts from sample conferences, showing the techniques that do and do not achieve the desired results. The samples do not include a perfect conference, however, because we do not believe perfection is attainable in so human an endeavor as a conference.

In the following scenario, the instructor wants to be open and flexible. She wants to allow for spontaneity so both she and the student feel comfortable. How well does she accomplish this goal? In these scenarios, the teacher's words are in bold typeface, the students' in regular. Their thoughts are in italics.

Scenario #1

Instructor: Let's see what I wrote on your paper ... hmm, well, I wrote something about conciseness here.... But you've read the comments, so what are your questions?

Student thinks: I'm getting nervous, What does she expect me to say? I wish she'd told me that I was supposed to come with questions, Now she's going to think I'm not putting in any effort.

Student: Umm ... well, I'm trying to remember where I had questions, I think it was on page 2; no page 5. I guess I can't find where it was.

Although allowing the student flexibility may sometimes help achieve a more relaxed atmos-

phere, it only increases the tension if the student feels unsure about the teacher's expectations or the purpose of the conference. To avoid this problem, the instructor might tell the student beforehand that the student will set the conference agenda. This prepares the student for being responsible for the opening focus of the conference. But even this preparation does not guarantee success, as the following sample illustrates.

Scenario #2

Instructor: As I said in class, this conference is really an opportunity for you to raise any questions you have. So let's begin with your questions.

Student: Thanks, I have lots of them, For starters, when you said I should put a comma here, why is that?

Instructor thinks: Uh oh, This isn't a major problem in this paper. I hope I can get through this question quickly.

Instructor: That comma is needed because you have an introductory clause there, so you need to distinguish that phrase from the main sentence.

Student: Oh, OK. And another question, on page 7, when you corrected me when I use an "s" at the end of Jones. So, what is the rule on that, and why?

Student thinks: I'm so glad he's answering all my questions. My only real problems are just with punctuation. Once I have these rules down, I'll be set.

This conference has a focus, but the teacher is discovering that it does not fit his goals. As a result, he becomes uncomfortable with the degree of flexibility he has. Being focused means identifying the boundaries of your flexibility. The instructor needs to realize that sometimes certain points need to be covered, even though the instructor still wants to reserve time for the student's questions.

Let's look at another approach that attempts to balance focus and flexibility.

Scenario #3

Instructor: In this conference, I'd like to talk about organization, but this is also your opportunity to raise any questions you have.

Student: Good. I have lots of questions. First, when you said I should put a semicolon here, why is that?

Instructor: Here you are dividing two clauses that could each be sentences, so you need a semicolon instead of a comma. Have you checked the manual on semicolons?

Student: No, not yet.

Instructor: Try reading that, and let me know if it doesn't help you.

Student: OK. Now, I have another question about the use of the possessive apostrophe....

Instructor: Actually, let's start with some of the more important problems first. I really need to make sure you understand the comments on organization, because that's what is going to be more important to the overall quality of the rewrite. So, although I don't want to ignore your questions, let's set punctuation aside for a while and look at organization. Do you have any questions about those comments?

When you as an instructor explain why you're not answering, most students will understand and adjust their focus to your topic, especially when they realize that you are focusing on what is most important for improving the paper. If a student persists with his or her question, you may find that you need to keep answering the questions, because you cannot address your concerns until the student is ready to listen.

Thus, focusing on your key points is useful, but so is limiting those points to two or three. Conference time is limited and your control over the conference is even further limited. You need to allow for the student's agenda, even though you have a full agenda of your own.

For example, in the next scenario, the teacher wants to focus on several key writing concerns in the student's paper. This teacher has no problem focusing the conference. But another problem appears.

Scenario #4

Instructor: What I'd like to do is talk about what I think are the major things you need to look at in your rewrite. As I wrote in my summary of comments at the end of your paper, the concise wording is very good throughout, with the exception of one or two spots.

So, the major questions we need to discuss are how you can make the reasoning more thorough and the organization clearer. Beginning with thoroughness, let's look first at page six. Now here's an example of where you

begin with a focused topic sentence, but then your reasoning doesn't seem to follow through. So right here where you wrote about policy, it seemed that another sentence was missing.

What you need then is a sentence that explains how you get to this final conclusion in the fifth sentence. It seems to me that you were thinking that policy was just another reason why the court decided the way it did. If you go back to your topic sentence, you can see that, so please note how I've suggested that you rewrite this sentence.

Moving on to organizational concerns...

Student thinks: He seems like he's got a lot of ideas for me but I wish he would let me ask a question, What was my question again, anyway? A few minutes ago I distinctly remembered having one....

This instructor is indeed making his points, but he is not necessarily communicating with the students. Just because the instructor has said the words does not mean the student has heard and absorbed them. Thus, along with focusing the conference, an instructor must listen to and accommodate the student. Without some flexibility, it is difficult to engage the student.

Let's see how interjecting a little flexibility helps.

Scenario #5

Instructor: As I wrote in my summary comments, the major questions we need to discuss are the thoroughness of the reasoning and organization. But before we do that, do you have any questions?

Student: Not just yet.

Instructor: OK then, first of all, good job on keeping the wording concise.

Student: Thank you. I really worked on that.

Instructor: I think now what you'll want to look at is how you could improve the reasoning. At the end of the last paragraph on page four, how does this last sentence connect with the previous one?

Student: Hmm. What was I thinking? Oh yes, well it was because I thought I needed to mention policy too.

Instructor: Yes, but how does that policy relate to the idea in the previous sentence? You may want to go back to your topic sentence. What is the main idea here?

By asking frequent questions, rather than speaking for long stretches, the instructor keeps the student involved. She also gains an opportunity to monitor the student's understanding of her points. Rather than focusing

her attention and the student's on what she is saying, she is focusing on what the student is thinking.

Let's follow this conference a little further.

Scenario #5, continued

Student: I thought the policy was just another reason why the court held the way it did.

Instructor: OK, that makes sense. Now try telling that to your reader.

Student: You mean write it?

Instructor: Yes. Here's a pen. Try adding that logical transition right now while you have it in mind.

The instructor has now led the student from seeing the problem into actually beginning to write the solution. With her own revision noted on the draft, the student is much more likely to remember and understand the substance of her conference with the instructor. Thus, although the instructor may not have covered many points, she has indeed taught the student something.

And the student knows it. That is what conferences are about: having the student learn through a private discussion with the teacher.

Real life is, of course, less predictable and messier than these scenarios. Nevertheless, real conferences are often variations on familiar themes, and understanding those themes helps you guide the conference effectively. For us, the two themes that we find most useful are the ones we have discussed here.

In summary, to maintain a balance of focus and flexibility, you as an instructor must do two things. First focus on only one or two objectives for each conference. You must keep your objectives limited in number because conference time is limited and the portion of that time that you can control is even more limited. You cannot discuss all the points you made in your written comments, and you may not be able to address all the student's questions. So focus first on the points you must cover. Identifying a specific focus before the conference or in the first minute enables you to accomplish something during that conference, and to know what you have accomplished.

Second, be flexible. You are not the sole determiner of the conference's agenda; the student has questions and concerns and often these do not address the points you believe needs to be the focus of the conference. Even if the student is focusing on minor points, address those concerns somehow. Until the student has satisfactory answers to those questions, he or she will not be ready to listen to your agenda anyway.

LETTERS TO THE EDITOR

To the Editors:

It occurs to me that creating an internet syllabus bank would be easy for experienced teachers and helpful for new teachers. Experienced teachers could submit their syllabi—either in their entirety, or just the “schedule” section—and new teachers (or experienced teachers looking for a change) could access the bank and browse through it looking for ideas. I asked our systems analyst about the idea. He said it could work, but that our system doesn't have the set-ups yet to handle it. If someone else thinks this is a good idea and is willing and able to set it up, great; if not, I'll be in touch again when I know more.

I admit that I thought of this idea for selfish reasons. Ohio State has eliminated adjuncts in the first year program, and next semester (in addition to teaching an advanced writing course), I will be teaching my own section of 20 first year students, and eleven “regular” faculty will be doing the same. I would love to show them some exemplars of good syllabi and give them a sense of what is standard practice in legal writing courses. If anyone is willing to e-mail, snail mail, or fax me a syllabus, I'd be a grateful recipient.

Thanks,
Mary Beth Beazley
Director of Legal Writing
The Ohio State University College of Law
55 West 12th Avenue
Columbus, Ohio 43210-1391
Fax: (614) 292-1383
mbeazley@magnus.acs.ohio-state.edu

To the Editors:

The University of Arkansas' draft of “Standards for Evaluating LR&W Teachers” that appeared in the May 1995 issue of *The Second Draft* has been modified and adopted for the upcoming year. The revisions entailed recasting the document into a set of general standards accompanied by detailed policies, as well as some changes in language. Anyone wishing an updated copy should contact me.

I can also provide you with a copy of the school's recently adopted tenure evaluation standards for a LR&W program director.

Thanks!
Jan M. Levine
Associate Professor
Director, LR&W Program
University of Arkansas School of Law
Fayetteville, AR 72701
(501) 575-7643
jlevine@mercury.uark.edu

NEWS

Activities of Section on Legal Writing, Reasoning, and Research at 1996 AALS Annual Meeting in San Antonio

The program for the Section on Legal Writing, Reasoning and Research, entitled "The Place of Narrative in Legal Writing and Beyond," will take place on Saturday, January 6th at 10:30 a.m. Professors James Elkins, Teresa Goodwin Phelps and Kim Lane will discuss the power of stories and other narrative forms.

The Section luncheon will be held at 12:15 p.m., directly after the Section program. To register for this lunch, simply fill in the appropriate section of the general AALS meeting registration form.

Directors of legal writing programs will gather for discussion and dessert on Saturday, January 6th at 3:30 p.m. at the Fairmount Hotel in San Antonio. To register call Professor Bonnie Roberts at (210) 431-2210 by December 15.

Report from Director's Conference

At the Director's Conference held last July in San Diego, participants voted to establish an organization of directors of legal writing programs. The group felt that directors needed a special forum to discuss issues of particular concern to them. Richard Neumann of Hofstra University School of Law was appointed Chair of the Executive Committee. The Committee's charge includes exploring internal structures of the organization, drafting by-laws, and determining its relationship, if any, with the Legal Writing Institute. This Committee plans to report on this final issue to interested directors at the AALS meeting at San Antonio, when members will vote on the organization's affiliation, if any, with the Institute. Current and former directors of legal writing programs are eligible for membership in the organization, but the organization has not decided the extent, if any, to which membership will go beyond this group.

Membership in CLARITY

Members of the Legal Writing Institute might like to consider joining an international organization called CLARITY. It has a range of members from different fields who are involved in the good fight to improve legal writing. If you would like a sample copy of its journal, write to Joe Kimble at Thomas M. Cooley Law School, Box 13038, Lansing, MI 48901. (If Joe can't round up 50 members for CLARITY, he may turn to a life of crime.)

Summer 1996 Legal Writing Institute Conference

The Seventh Biennial Conference of the Legal Writing Institute will be held at Seattle University School of Law in Seattle, Washington from Thursday, July 18 through Sunday, July 21, 1996. The theme of the Conference is "Learning From

Other Disciplines." The program will feature plenary sessions focusing on learning theory, composition, and logic and rhetoric; as well, it will include training sessions for new faculty, directors, law librarians, and academic support faculty. Conference brochures will be mailed in February to members of the Legal Writing Institute.

ACHIEVEMENTS

Sam Jacobson, Instructor of Legal Research & Writing at Willamette University College of Law, was recently awarded a two year grant for \$40,000 from FIPSE (Fund for the Improvement of Post-secondary Education) in the U.S. Department of Education. The grant will fund an experimental tutoring program that will use second year students who were delayed in mastering the essential legal skills of analysis, research and writing to tutor first year students in Legal Research and Writing. The goals of the project are to provide an opportunity to some of the second year students to reinforce what they have learned by tutoring others and to provide additional learning opportunities to the first year students.

Leigh Hunt Greenshaw, Associate Professor of Law at Weidener University School of Law, recently published an article that may be of interest to readers of *The Second Draft*. The article, entitled "Say What the Law Is: Learning the Practice of Legal Rhetoric," uses *Marbury v. Madison* and a rhetorical view of law to argue that separation of writing from the core courses of the first year curriculum, in subject matter of courses or in faculty, is theoretically unsound. The article is published at 29 *Valparaiso Law Review* 861 (1995).

Legal Writing Institute Committees, 1994-1996

The following is a list of the committees of the Legal Writing Institute and their chairs for 1994-1996. If you are interested in serving on a committee, please contact the chair.

Accreditation and Academic Standards
Richard Neumann, Hofstra, chair

Plagiarism

Terri LeClercq, University of Texas, chair

Mentoring

Susan McClellan, Seattle University, co-chair
Jenny Zavatsky, Seattle University, co-chair

Idea Banks

Martha Siegel, Suffolk, chair

Newsletter

Joan Blum, co-editor
Jane Gionfriddo, co-editor
Francine Sherman, co-editor

Regional Conferences

(the following people have agreed to be contact people for regional conferences)
Laurel Oates, Seattle University, general contact
Philip Genty, Columbia, Northeast
Helene Shapo, Northwestern, Upper Midwest

The following is a list of Legal Writing Institute Board Committees for 1994-1996:

Executive Committee

Anne Enquist
George Gopen
Steve Jamar
Laurel Oates
Chris Rideout

Elections

Chris Wren, chair
Katy Mercer

Program Committee for 1996 Conference

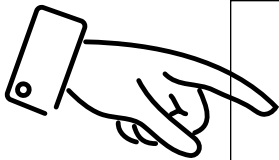
Laurel Oates, chair
Steve Jamar
Chris Kunz
Terri LeClercq
Helene Shapo
Chris Wren

Conference Policies and Procedures

Anne Enquist, chair
Diana Pratt

Editorial Board, Journal

Chris Rideout, editor-in-chief
Rebecca White Berch
Susan Brody
Anne Enquist
George Gopen
Katy Mercer
Diana Pratt
Jill Ramsfield
Marjorie Rombauer
Kristin Woolever



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