

## Using Formulas to Help Students Master the “R” and “A” of IRAC

By Hollee S. Temple

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In the recently published *How Lawyers Lose Their Way: A Profession Fails Its Creative Minds*, two University of Pittsburgh law professors propose that the “formalistic” nature of legal education is one reason why so many lawyers are so unhappy.<sup>1</sup> They suggest that by valuing “rigid rules” above all else, the traditional law professor has slowly destroyed the spirit of law students who once prized innovative thought, and that these students carry this discontent into their law practices.<sup>2</sup>

As I read the book, I empathized with the large law firm associates who were interviewed, many of whom found their practices to be unsatisfying because of monotonous work, lack of human interaction, and intense competition.<sup>3</sup> Many of the same complaints propelled me out of my law firm and into the classroom, where I felt some of my natural “creative” talents were better utilized. However, as a newer legal writing professor, I worried about the book’s core assumption. Was I now a party to this formalistic law teaching that was draining my students’ creativity?

After giving this some thought, I’ve concluded that while the formalistic nature of doctrinal teaching may indeed be too rule-focused, legal writing and skills professors operate in a different, distinct

universe. Our students, most fresh from undergraduate writing experiences that prized both length and obfuscation, need a template to help them transition into the legal setting, where supervisors and judges expect practitioners to adhere to the IRAC (Issue, Rule, Application, Conclusion) format.<sup>4</sup>

While we all, of course, use IRAC (or some derivation of it) to outline the general approach to legal reasoning and writing, I have found that the more “formulas” I develop to help my students with IRAC’s individual elements, the more they thank me.<sup>5</sup> For this generation of law

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<sup>4</sup> Anne Enquist, *Talking to Students About the Differences Between Undergraduate Writing and Legal Writing*, 13 *Perspectives: Teaching Legal Res. & Writing* 104 (2005).

<sup>5</sup> At the risk of sounding a bit overconfident, I’ve included a comment from a student’s evaluation of my fall 2004 semester course: “I love Professor Temple’s approach to teaching skills. Her technique is simple and straightforward, which is much appreciated by this confused 1L.”

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<sup>1</sup> Jean Stefancic & Richard Delgado, *How Lawyers Lose Their Way: A Profession Fails Its Creative Minds* (2005).

<sup>2</sup> *Id.* at 48–49.

<sup>3</sup> See generally *id.* at 62–71.

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students—a group accustomed to Googling for instant answers—simple templates that can be quickly grasped and applied seem to work best.<sup>6</sup> These students, most having come through an American educational system that valued content over form, need the most help with structure, and the more bite-sized templates I offer, the more easily my students seem to digest the IRAC format.<sup>7</sup>

Over the past two years, I have developed and adapted internal formulas for both the R and A sections of an IRAC analysis.<sup>8</sup> Of course, students must develop the judgment to determine whether a particular formula is warranted for the specific R or A at issue, but the formulas provide a great launching pad. Time and again, I have found that my formulas flip the mental light switch for students who are struggling with the transition to legal writing.<sup>9</sup>

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<sup>6</sup> For more on the tendencies and preferences of today's students, see Tracy McGaugh, *Generation X in Law School*, 9 *Legal Writing* 119, 143 (2005). Professor McGaugh notes that the next generation of law students will be accustomed to “constant visual and auditory stimulation.” While I can't suggest that my formulas are as fun as computer games, they seem to speak to students who need stimulation (just as “guided note-taking” has worked for McGaugh's students).

<sup>7</sup> For a great explanation of why so many of our students struggle with form, see Stanley Fish, *Devoid of Content*, *N.Y. Times*, May 31, 2005, at A17.

<sup>8</sup> Many legal writing professors have devised their own formulas for tackling IRAC, and some have published these ideas. In 1995, the Legal Writing Institute devoted an entire edition of its biannual newsletter to debating the pros and cons of IRAC, with many professors offering their own twists on the paradigm. 10 No. 1 *The Second Draft* (Nov. 1995). More recently, Professor Craig Smith has written about a visual “charting” technique that helps his students with a difficult task in the R section—rule synthesis. Craig T. Smith, *Teaching Synthesis in High-Tech Classrooms: Using Sophisticated Visual Tools Alongside Socratic Dialogue to Help Guide Students Through the Labyrinth*, 9 *Perspectives: Teaching Legal Res. & Writing* 110 (2001).

<sup>9</sup> In addition, my experience has mirrored that of Professor Karen Koch, who has written an extensive piece about the parallels between scientific writing and legal writing, noting that students with scientific backgrounds who struggled to master IRAC were able to overcome that mental hurdle when she showed comparisons between the IRAC structure and the rules-driven structure of computer programming/scientific writing. Karen L. Koch, *A Multidisciplinary Comparison of Rules-Driven Writing: Similarities in Legal Writing, Biology Research Articles, and Computer Programming*, 55 *J. Legal Educ.* 234 (2005).

## The R Section: Formulas for Writing About Rules<sup>10</sup>

### ■ Big Formula #1:

R= 1) Rule Overview + 2) Case Illustrations

### ■ Mini-Formula #1: Rule Overview

I preface the R formulas by explaining that when a reader is prepared for what follows, comprehension improves. In other words, if the writer will “set the stage” for a rule before diving into its details, the reader is more easily able to grasp a difficult concept.<sup>11</sup>

Therefore, I tell my students that they should begin their R sections with a “Rule Overview.” As I explain below, the length and complexity of the overview will vary depending upon the rule. But, the gist is that a rule should be broadly defined before the legal writer uses cases to illustrate its operation.<sup>12</sup> After offering a general explanation of the rule in the overview, the writer should then go on to explain how the rule operates, and how judges will apply it. Case illustrations accomplish that task.

For a simple rule, the rule overview should be simple. It is often a single-sentence statement that

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<sup>10</sup> After I encountered success with my first formula, I figured I was on to something, so I developed “formulas within formulas” to give further guidance on building strong R and A sections. For clarity, I label the overarching formulas for the R and A sections as “Big Formulas,” and the formulas within formulas “Mini-Formulas” with “Steps.” This works for my students because we use the term “mini-IRAC” for what others call nested IRACs. For example, my students would call the discussion of what constitutes a “dwelling” under an arson statute the “mini-IRAC on the dwelling element of burglary.” They know that means they will need to go through an I-R-A-C outline for that element.

<sup>11</sup> I offer an example from the quintessential torts case, *Palsgraf v. Long Island Railroad Company*, 248 N.Y. 339, 162 N.E. 99 (1928). I tell the students to imagine that they are telling a non-law student friend about what they've learned in torts, and then I ask them to choose from two techniques: 1) they can dive right into a description of Helen Palsgraf and the details of the falling scale and exploding fireworks, or 2) they can explain that they are learning about negligence and how much someone has to contribute to an accident to be held responsible before giving any facts. Most of my students immediately agree that the reader/listener “gets” the difficult concept of proximate cause more quickly if a brief introduction to the rule precedes the factual background.

<sup>12</sup> Professor Sarah Ricks offers a similar approach in *A Case Is Just an Example: Using Common Experience to Introduce Case Synthesis*, *The Second Draft*, Dec. 2003, at 22.

“ [T]he more bite-sized templates I offer, the more easily my students seem to digest the IRAC format. ”

“In a simple case, a verbatim copy of the relevant statute might suffice for the rule overview.”

clearly describes the rule. For a more complex rule overview, such as a rule requiring synthesis of a statute and case law, the students write more complex, and often longer, overviews.

### Simple Rule Overview

In a simple case, a verbatim copy of the relevant statute might suffice for the rule overview. For example, imagine that a partner asks an associate to find West Virginia’s indecent exposure statute and advises that the associate is not to deeply analyze any factual issues.<sup>13</sup> The associate would not be aware of the partner’s real question—whether a breastfeeding mother could be convicted of indecent exposure under West Virginia law. (This was the topic of my fall 2004 research problem; most of the following examples are drawn from student memoranda.)

**Example:** Section 61-8-9(a) of the *West Virginia Code* provides:

(a) A person is guilty of indecent exposure when such person intentionally exposes his or her sex organs or anus or the sex organs or anus of another person, or intentionally causes such exposure by another or engages in any overt act of sexual gratification, and does so under circumstances in which the person knows that the conduct is likely to cause affront or alarm. W. Va. Code § 61-8-9 (2002).

### Complex Rule Overview

On the other hand, if the partner asked for a deeper analysis of West Virginia’s indecent exposure statute, the rule overview might include a synthesis of the relevant statute and case law.<sup>14</sup> I describe the

<sup>13</sup> Former law firm associates will remember well (but perhaps not fondly) the “just find me the law” assignment. Our students face this task often, and are often not given enough factual background to perform any detailed analysis. In such cases (particularly if the associate is discouraged from asking follow-up questions regarding the facts of the case), the simple rule is all that can be offered.

<sup>14</sup> An example from a student’s memorandum shows how West Virginia’s highest court interpreted and applied the statute: Under the West Virginia indecent exposure law, a person is guilty of indecent exposure when he or she (1) intentionally exposes his or her sex organs or anus, (2) does so under circumstances in which he or she knows that the conduct will likely cause affront or alarm, and (3) does so without the consent of the victim. W. Va. Code § 61-8-9 (2002); *State v. Knight*, 285 S.E.2d 401, 405 (W. Va. 1981) (citing W. Va. Code § 61-8B-10 (superseded 1992)).

process of creating a synthesized rule as one of my first students did: grabbing ingredients from different shelves (case law, statutes, policy) to create the final recipe.<sup>15</sup>

Many of my students were able to draft solid rule overview paragraphs that included synthesis after I’d offered the “recipe” analogy, but some still struggled. They weren’t sure how to bring the ingredients together into a cohesive rule overview. So, I looked for a more specific, formulaic way of describing a strong rule synthesis, and came up with the following “steps” for students to consider (in this suggested order) when drafting a synthesis: 1) what is the law/rule; 2) what isn’t the law/rule (exceptions, exclusions); and, 3) what factors will the court consider/how does the rule work? These steps worked better for some students, and produced almost identical results.

**Example:** Under West Virginia law, a person is guilty of indecent exposure when he or she (1) intentionally exposes his or her sex organs or anus, (2) does so under circumstances in which he or she knows that the conduct will likely cause affront or alarm, and (3) does so without the consent of the victim (string citation to statute and cases omitted). In analyzing the defendant’s intent, the court will carefully consider the circumstances surrounding the exposure (case cite omitted).

### Mini-Formula #2: Case Illustrations

My students immediately understood that their “case illustrations” should somehow imitate the case descriptions that they read in appellate opinions, but they wanted more specifics on what to include. Again, a step-by-step approach did the trick.

### Step 1: The Three-Part Approach

First, I explain that a thorough case illustration<sup>16</sup> should include at least three parts: 1) factual

<sup>15</sup> For an excellent, but slightly different, approach to teaching rule synthesis, see Sarah Ricks, *supra* note 12.

<sup>16</sup> I use the term *case illustration* when I want students to provide a detailed case background. If the students determine that they need only a proposition or rule derived from the case, I advise them to consider whether a full case illustration is warranted.

background, 2) reasoning, and 3) holding. I define factual background as the determinative facts that the court relies on in reaching its holding. Reasoning means the specific reasons that the court articulates (or implies) for reaching its holding. The holding, of course, is the decision in the case. I suggest that these are the key elements that a practicing lawyer or judge needs to later evaluate the validity of the legal writer's analogies and distinctions.

**Example<sup>17</sup>:** In *Capetta*, a topless dancer exposed her breasts to patrons and allowed them to touch her breasts for a dollar. The patrons of the establishment were willing participants, solicited her conduct with their dollars, and did not leave in shock (*factual background*). Because a reasonable person would interpret the patrons' conduct to signal approval (*reasoning*), the court held that, based on these circumstances, the defendant had no reason to know that her exposed breasts would cause affront or alarm (*holding*).<sup>18</sup>

### Step 2: Adding the Key Proposition

Once the students have mastered the three-part formula, I add one final step. Because case illustrations are so important to a reader's understanding of how a rule operates, I suggest that an introductory "key proposition" sentence should precede the three-part case illustration. The introductory key proposition sentence is somewhat self-explanatory.<sup>19</sup> First, it should kick off the case illustration, preceding the details of the case's factual background, reasoning, and holding. Second, it must contain the key proposition from the case, which I often explain as "the reason why the reader should bother to read the case

illustration," or "what you want the reader to get from reading your case illustration." As experienced legal writers know, the key proposition often speaks to the court's reasoning (and that tip often gets students on the right track).

### Case Illustration Plus Key Proposition Example:

In analyzing the defendant's knowledge, the court likely will consider the circumstances surrounding the defendant's conduct objectively (*key proposition*). For example, in *Capetta*, the defendant, a topless dancer, exposed her breasts to patrons and allowed them to touch her breasts for a dollar. The patrons of the establishment were willing participants, solicited her conduct with their dollars, and did not leave in shock (*factual background*). Because a reasonable person would interpret the patrons' conduct to signal approval (*reasoning*), the court held that, based on these circumstances, the defendant had no reason to know that her exposed breasts would cause affront or alarm (*holding*).

### The A Section: Formulas to Help Students Analyze Facts in Light of Rules

#### ■ Big Formula #2:

A = 1) Best Fact + 2) Compare to Precedent + 3) Connect to Expected Result

After my students mastered the formulas and steps for the R section, they wanted formulas for the rest of IRAC.<sup>20</sup> My students have struggled with the A section for a variety of reasons. Some are overwhelmed by the structure we require in legal writing. By the time they get to the A section, they are either too exhausted or frustrated to "stick with the program," and some go off on incoherent tangents in their efforts to apply the rules to the facts of their fictional clients' cases. Others suffer

“After my students mastered the formulas and steps for the R section, they wanted formulas for the rest of IRAC.”

<sup>17</sup> To save space, I've omitted citations.

<sup>18</sup> I suggest the "Because X, then Y" formula as a logical way of addressing both reasoning and holding in a single sentence.

<sup>19</sup> My "key proposition" sentence is similar to the "thesis sentence" that Professor Linda Edwards describes in her textbook. Linda H. Edwards, *Legal Writing: Process, Analysis, and Organization* 94–5 (3d ed. 2002). However, my students seem to have an undergraduate, broad view of the term thesis sentence. Using the word "key proposition" gets them to accomplish the specific task that Edwards suggests: to "articulate the paragraph's point." *Id.* at 95.

<sup>20</sup> I will admit that when badgered by a well-meaning student during a conference, I even dictated a fill-in-the-blank formula for the A/C statement: Because \_\_\_\_\_ (insert key fact here), the party will/won't establish \_\_\_\_\_ (insert rule here). Example: Because the prosecution cannot establish that the defendant knowingly exposed her breast, the prosecution cannot satisfy the second element of indecent exposure. But for fear that students will believe that "all I want" is adherence to a rote formula, I don't share this in class.

“Because legal analysis turns on rules, and because rules vary so widely from case to case, I couldn’t devise a simple formula to cover all types of analysis.”

from weak analogical reasoning skills; they simply cannot see how their facts are like or unlike the precedent. Finally, some of my students just don’t want to do the difficult work required of legal writers tackling the A section. These students leave the reader with what I call the difficult job of “connecting the dots.” They may throw out a few facts for the reader to consider, but they leave it to the reader to draw the explicit comparisons or distinctions.

Because legal analysis turns on rules, and because rules vary so widely from case to case, I couldn’t devise a simple formula to cover all types of analysis. Nevertheless, because I wanted to offer some sort of model for the A section, I developed a three-step system that has worked for analyzing many types of rules.<sup>21</sup> The steps are: 1) give the best fact first; 2) compare to the precedent; and, 3) connect to the likely result.

#### Step 1: Give Your Best Fact First

My students struggle to begin their A sections. We offer numerous examples from textbooks, but they’re all slightly different and I honestly don’t love any of them, mostly because I believe they ask too much of the reader.<sup>22</sup> With my students, I emphasize that a busy partner does not want to have to do any “heavy lifting” when reading their memoranda, and therefore they must strive for absolute clarity and simplicity. “Don’t leave the

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<sup>21</sup> I got the idea for this formula by adapting the excellent suggestions made by Professors Anne Enquist and Sarah Ricks in previous *Perspectives* articles. Anne Enquist, *Teaching Students to Make Explicit Factual Comparisons*, 12 *Perspectives: Teaching Legal Res. & Writing* 147 (2004); Sarah E. Ricks, *You Are in the Business of Selling Analogies and Distinctions*, 11 *Perspectives: Teaching Legal Res. & Writing* 116 (2003).

<sup>22</sup> For example, I offer Appendix C of Richard Neumann’s textbook for an office memorandum example. Richard K. Neumann Jr., *Legal Reasoning and Legal Writing* (5th ed. 2005). However, I think the beginning of the A section in that memo requires too much of the reader: “The courts are likely to consider Goslin’s circumstances to be at least comparable to those of the farmer in Sharp and the brother in Sinclair.” *Id.* at 444. Instead, I advise my students to lead with the *fact* that will hold sway with the court. Here, I think the memo would be more readable if the A section began with a sentence about the key fact: an unstated understanding that mortgage payments were made to reciprocate college tuition payments.

reader to connect the dots,” I say. Instead, begin by explicitly stating which fact or facts the court will rely upon in analyzing the rules and reaching its conclusion. In other words, start with the determinative facts and immediately tell the reader why those facts influence the analysis.

**Example:** Because Ms. Boyle exposed herself at a public pool, at 11 a.m., and in the presence of children, ages 8 and 9, the court probably will find that Ms. Boyle’s conduct under the circumstances was likely to cause affront or alarm.

#### Step 2: Explicitly Compare Your Facts to the Precedent

For this step, I’ve drawn heavily from Professor Anne Enquist’s excellent template.<sup>23</sup> Using a simple charting system, Professor Enquist helps students draw explicit factual analogies and distinctions, and then she offers a format for writing about those comparisons. The basic idea is that the writer must lay out the determinative facts in the client’s case and in the precedent, and then explain why the clients’ circumstances will produce a similar or different result. Professor Enquist suggests that the reader will “readily see the comparison” between the cases if the writer maintains the sentence structure shown in her example.<sup>24</sup>

**Example:** Like the defendant in *Randall*, who exposed himself to an 11-year-old boy during the afternoon, the defendant here also exposed herself during the day and in the presence of children.

#### Step 3: Connect to the Expected Result

After the writer has offered up the key facts and explained how those facts should be analyzed in light of the precedent, I suggest that the writer should

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<sup>23</sup> Anne Enquist, *Teaching Students to Make Explicit Factual Comparisons*, 12 *Perspectives: Teaching Legal Res. & Writing* 147 (2004).

<sup>24</sup> My students have successfully implemented Professor Enquist’s technique. The example from her article is: “Like the defendant in *Smith*, who allowed his daughter’s boyfriend to use the family car to drive to a dance, the defendants’ in the clients’ case allowed their family friend to use the family car to drive to work.” *Id.* at 148. While Professor Enquist suggests that students need not “rigidly and mindlessly” repeat the exact sentence structure from the example, many of my students did—to great effect.

conclude the analysis by predicting how the court will rule. This seems simple, but too many legal writers “leave the reader hanging,” or assume that the reader can reach the conclusion without this explicit connection. Therefore, I include the “predicted result” as one of the three steps required for a complete analysis.

**Example:** Therefore, just as the *Randall* court held that exposure of genitals during the day and in the presence of children caused affront and alarm, the court here will probably hold that the client’s breast exposure also caused affront and alarm.

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“ [T]oo many legal writers ‘leave the reader hanging,’ or assume that the reader can reach the conclusion without this explicit connection.”

### Another Perspective

“Books spend a lot of time on bookshelves, hanging around near the curb, as it were, waiting for someone to come along with an idea for something to do. Books are the wallflowers at the dance, standing up but leaning on one another and depending on one another for their collective status. Books are the Martyrs of Saturday nights, ending up at the same place at the same time week after week. Books in dust jackets are the queue at the bus stop, the line of commuters with their faces hidden in their newspapers. Books are the things in the lineup, all fitting a profile but with only one of them expecting to be picked out. Books are the objects of searches.”

—Henry Petroski, *The Book on the Bookshelf* 14 (1999).