

What Can Legal Writing Students Learn from Watching *Emeril Live*?

By John D. Schunk

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Over the decade I have spent teaching legal writing, I have tried to make sure students do not think legal writing is unique; in fact, I try to relate legal writing concepts to other things. Sometimes, the analogies are fairly straightforward like those to journalism and speech writing. Other times, they come from places one might not expect. One night while I was channel surfing, I found one courtesy of *Emeril Live* on the Food Network.

For those who do not know, *Emeril Live* is a popular show starring Emeril Lagasse. Emeril Lagasse became well-known after establishing a series of successful restaurants in New Orleans. On his show, he demonstrates how to make and cook a number of gourmet dishes. He is known for trying to “kick it up a notch” with his dishes by adding cayenne pepper with his signature “bam!”

During one episode, he stopped preparing a dish and took a moment to make sure his audience knew the difference between two types of recipes. In doing so, he provided a lesson many legal writing students should note.

As explained by Emeril Lagasse, there is a difference between a recipe for baking a casserole and a recipe for baking a cake. Essentially, one is a guideline to be followed generally and the other is a formula. In cooking, a recipe is generally a set of directions with a list of ingredients for cooking. Recipes for baking are more like a formula, that is, “a prescription of ingredients in fixed proportion.” For example, when baking a cake, one needs to use the correct ingredients in just the right proportion. Adding too little or too much of any ingredient can ruin the cake. In contrast, when making and baking a casserole, one follows the recipe generally, but one can add to or subtract from the list of ingredients to

suit one’s taste. Varying from this recipe by adding more spices does not ruin the dish and may improve the dish.

I took note while watching this episode because each year I have a number of students who struggle with the balance between the basic structure for presenting a legal argument and the desire for a precise formula they can follow when writing in order to achieve the desired grade. For example, these students often fail to see the differences between rule application arguments¹ and rule selection arguments.² They do not understand why certain arguments have longer rule explanation sections than others, why certain arguments may incorporate public policy while others do not, or why certain arguments rely more on analogies than some others. When talking with these students, thanks to watching *Emeril Live*, I now have a good analogy that students appear to accept and understand.

This analogy asks students to look at legal writing as more of a casserole than a cake. Each has a recipe, but good legal writing allows for more variations in presenting legal arguments than a fixed formula.

The basic recipe for any legal argument remains deductive reasoning in the form of a syllogism.³ While legal writing teachers often use acronyms

¹ As used in this article, a rule application argument refers to those in which the contesting parties do not dispute the generally applicable rules but dispute the application of those rules to the facts in a particular case.

² In contrast with a rule application argument, a rule selection argument, as this article uses the term, is one where the parties generally agree on the facts but dispute vigorously what rules a court should apply to the generally uncontested facts.

³ See Nadia E. Nedzel, *Legal Reasoning, Research, and Writing for International Graduate Students* 66 (2004).

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such as IRAC⁴ and CRAC⁵ to convey this concept to legal writing students, the syllogism still is the basic underlying organizational structure for most legal arguments.⁶ Analogical reasoning then supports and supplements the deductive framework.⁷ Most often, an analogy to previous decisions helps reinforce the minor premise in the syllogism.

If students view the recipe as one for a casserole rather than a cake, they often become more comfortable with varying from the recipe to the extent it helps make any legal argument. For example, one can “spice” a legal argument with a greater development of the major premise in a rule selection argument by appealing to legislative history, analyzing in detail a circuit split, or considering public policy. One also can “spice” a legal argument with a greater development of the minor premise in a rule application argument by increasing the use of the record in an appeal, or by making a series of comparisons or contrasts with seemingly analogous case law.

In contrast, if they view the recipe as one for baking a cake, legal writing students sometimes fall into a trap of thinking that a syllogism requires a fixed amount of writing explaining their major and minor premises when, in fact, it will likely vary from argument to argument. In this situation, some students will ask questions like “how many cases do I need to cite in my argument?” as though the recipe for their legal argument has a fixed proportion of cases on the list of ingredients.

Since I began using this analogy with students, I have had more success convincing students that a good legal argument follows a general recipe and dissuading students that legal writing exists as a formula. The recipe analogy goes even further because it also conveys to students that they cannot do just anything and call it a legal argument. After all, if one varies too much from a recipe, one might cook something but it would not be the dish one intended to prepare. The same is true of a legal argument. If one veers too far from the basic syllogism, one may write a series of paragraphs that read very well, but these paragraphs would fail to qualify as a legal argument. In contrast, if one follows the general organization of the syllogism in structuring a legal argument, then one can “spice” the legal argument with a variety of materials. In short, if the student accepts the recipe analogy, the student receives both a structure providing guidance and the freedom to be creative within that structure.

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⁴ As most know, IRAC stands for Issue, Rule, Analysis or Application, and Conclusion in that order. This acronym serves to remind the law student or anyone else that after stating the Issue, one needs to state the Rule (i.e., the major premise) and show whether the stated rule Applies to a certain set of facts (i.e., proving the existence of the minor premise) in order to reach a Conclusion. If followed, the IRAC acronym reminds students to use a syllogism in analyzing legal issues.

⁵ The CRAC acronym serves the same function as IRAC, but it reminds the law student to start by stating his or her Conclusion or basic thesis before stating the Rule (i.e., major premise), Applying the rule (i.e., proving the minor premise), and reaching a Conclusion.

⁶ *Id.* at 66–69.

⁷ *Id.* at 66.