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

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

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

First, let’s discuss organization

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

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

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

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

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

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

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

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

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

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

Next let’s discuss handling precedent

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

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

As such, drafting case illustrations provides a good teaching tool to reinforce the basic skills of case analysis and an efficient method to assay student progress.

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

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

Likewise, another primary purpose served by case illustrations is to prove that the law really is as described by the writer.14 However, in practice, a lawyer is ethically obligated to not knowingly make any false statements of fact or law to any tribunal.15 As such, a legal citation bolstered by the lawyer’s professional duty of candor toward the tribunal supplies adequate proof that the rule is as described. The legal citation provides the reader with the ability to review the authority. And responsive briefing and oral argument provide ample opportunity to rebut any liberties taken in briefing.

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

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

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

In the middle of the precedent spectrum, between mandatory authority and the unprecedented, consider bolstering your legal analysis with parentheticals.
Parentheticals consist of additional text enclosed in parentheses that follows your citation. For example: *Kennedy v. Collagen Corp.*, 161 F.3d 1226, 1230-31 (9th Cir. 1998) (noting that faults in an expert’s specific methodology go to the weight afforded the testimony rather than its admissibility). The participle parenthetical beginning with a gerund (an “-ing” word) such as “holding” can work great to concisely explain relatively straightforward cases. Also, as part of a string cite, parentheticals can work effectively to demonstrate that the law is well-settled. Last, parentheticals can effectively integrate persuasive, pithy quotes from cases that don’t warrant a more detailed discussion.

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

Endnotes
3. Id. at 82.
4. CRuPAC, CREXAC, CRAC, IRREAC, and many more.
6. Id.
8. Id.
11. Id. at 105-107.
12. Id. at 109.
13. Id.
14. Id. at 110.

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Benjamin Calvin Rice
1938-2016

Benjamin Calvin Rice died peacefully at home with his wife at his side on April 18, 2016, in South Jordan, Utah. Ben was born October 12, 1938, in San Bernardino, California, to Robert Elzie Rice and Martha Francis Harris.

He met his wife, Loneta Pettit, on a blind date in Bakersfield and they were married in the Manti Temple on November 2, 1962. Ben and Loneta are the parents of 15 children: Ben (Debbie) Rice, Jim (Tish) Rice, Debi (Steve) Mortensen, Becky (Rick) Ware, Michelle (Paul) Higginson, Elizabeth (Guy) Terpening, Raymond (Courtney) Rice, Martha (Trenton) Hill, Dan (Marian) Rice, Anna (Jeremy) Clark, Cathy (Derek) Korby, Tamara (David) Kenney, John Rice, Austin (Kim) Rice, Jessica (Joel) Beavers. They have 48 grandchildren and 14 great-grandchildren.

Ben practiced law for 35 years in Idaho, enjoyed painting and working outdoors, and spent his retirement surrounded by family in North Carolina, Florida, and Utah. During his retirement, he served as a temple worker in the Columbia, South Carolina Temple every Saturday for four years.

Ben was preceded in death by his mother and stepfather, Martha and John O’Connor, and his brothers, Frank and Jim.

D. Fredrick Hoopes
1940-2016

D. Fredrick Hoopes, 75, of Idaho Falls, passed away July 12, 2016, at Hospice of Eastern Idaho Home.

Fred was born Oct. 3, 1940, in Rexburg, Idaho, to Dan Bickmore Hoopes and Verna Bertha Grimmert Hoopes. He graduated from Idaho Falls High School.

On Oct. 11, 1969, he married Sidney Combs in Fayetteville, Ark. They have two daughters, Rachel and Sarah.

After graduating from law school at Texas Tech University in Lubbock, Fred was admitted to practice law in 1973. He attended undergraduate school at Brigham Young University and American University in Washington, D.C., while employed by the late Senator Frank Church.

He joined the law firm of Hopkins Roden Crockett Hansen & Hoopes in January 1982. He was an adjunct professor and visiting lecturer at the University of Idaho College of Law in Moscow, Idaho.

Fred was a recipient of the Thurgood Marshall Liberty Award from the American Civil Liberties Union of Idaho for the successful defense of a death row inmate. He was a fellow in the American College of Trial Lawyers. Fred was given the Distinguished Lawyer Award by the Idaho State Bar in 2014. He was a president of the Idaho State Bar and a president of the Idaho Trial Lawyers Association. Fred was a member of the Board of Directors for the Idaho Association of Criminal Defense Lawyers. He served on the Idaho Supreme Court Advisory Committee on Evidence. He was a fellow of the American Bar Foundation.

Fred was also active in public and community affairs. He enjoyed reading and politics. He was a proud Idahoan who loved the outdoors. He was an angler and a wrangler; he was an avid fly fisherman, a fly tier and owned quarter horses and mules. His two grandchildren were the joy of his life.

Fred is survived by his loving wife of 47 years, Sidney Hoopes of Idaho Falls; daughter, Rachel Virginia (Jeff) Dolven of Gig Harbor, Wash.; daughter, Sarah Elizabeth Hoopes of Boise, Idaho; brother, John (Lynette) Hoopes of Arizona; sister, Kathryn (Bruce) Flint of Idaho; sister, Kristine (Wayne) Reynolds of Utah; brother, William (Vonnie) Hoopes of Arizona; sister, Pamela (Rick) Welsh of Utah; and two grandchildren.

Hon. Richard G. Magnuson
1927-2016

Judge Richard G. Magnuson, 89, passed away peacefully on July 18, 2016, at his home in Wallace, Idaho, just a few short blocks from where he was born. Always a boy from Wallace, he carried with him a deep love of his hometown and a wealth of knowledge and memories about all things related to the Silver Valley and its rich mining history.

Judge Magnuson was born on April 5, 1927, the second of three sons to his parents, Harry and Mary Magnuson. A member of the Greatest Generation, he grew up during the Great Depression, steeped in the work ethic of his parents and the joys
of a small town boyhood. Working at his Italian grandparents’ farm in Harrison for many summers alongside his brother and cousins was an experience that shaped his life and provided fodder for many dinner table stories. Most of these stories involved his beloved grandfather, Nono.

Richard graduated from Wallace High School in 1944 and started college at the University of Idaho as a member of Sigma Nu fraternity. His college career was interrupted by a stint in the U.S. Army, after which he moved back to Moscow to continue his education.

On July 7, 1947, his life changed forever when he caught the eye of a pretty girl from Mullan, Elsie Johnson, at his summer job at Hecla Mining Company. He and Elsie married on Sept. 10, 1950, and enjoyed nearly 66 years of “pure bliss.”

Richard graduated from the University of Idaho in 1951 with his law degree. He returned to Wallace to practice law in the Tabor Building. He was appointed Deputy Prosecutor under Bob Fanning in 1957, and was elected Shoshone County Prosecutor in 1960.

After more than 18 years in the Prosecutor’s office, Richard returned to private practice in 1977 in the Shoshone Building with his wife, Elsie, running the office. In 1983, he began his tenure as District Judge of the First Judicial District, a position he held until his retirement in 1991.

Richard had a deep interest in and love of the history of the Silver Valley mining district. In 1968, after a year researching old newspaper archives from the late 1800s, he wrote and published “Coeur d’Alene Diary: The First Ten Years of Hardrock Mining in North Idaho.” He delighted in educating anyone interested in mining history, and never failed to set the record straight if he came upon a historical inaccuracy. Locals and strangers alike would seek him out for his encyclopedic knowledge of the area.

Another consuming interest of Richard’s was the collecting of trade tokens, and in 1977, he published The Brunswick Token Story with Paul White. He spent many happy hours in communication with other collectors, pursuing and chronicling his collection.

A member of Wallace Elks B.P.O.E No. 331 and the Wallace Gyros, Richard enjoyed many friendships that spanned decades and transcended age.

Richard is survived by his wife of 65 years, Elsie, of Wallace; his son, Rick (Amy) Magnuson of Los Altos, Calif.; his daughter, Janet (John) Morse of Mercer Island, Wash.; and his daughter, Julie Magnuson of Wallace. He is loved by his nine grandchildren: Charles, Molly (Matt) Woodward, Max and Natalie Magnuson, and Eric, Paul, Dave, Brad and Emily Morse. He is also survived by his brother, Bob Magnuson of Spokane, Wash.; and numerous nephews, nieces and cousins.

Nicholas Beermann
1972-2016

Nicholas Beermann passed away suddenly and unexpectedly on July 30, 2016. Nick traveled the world and spoke several languages, giving him a multi-faceted perspective that he generously shared with others. Nick packed in many amazing experiences in his all too brief 44 years.

Nick cared deeply about his family and loved to share his family adventures. He was a loving father, with five children, who he cared for deeply.

Nick was a partner in a firm’s Seattle office. He practiced in all areas of employment and labor law with an emphasis in employment contracting and dispute resolution, corporate governance and internal investigations, and privacy law.

In 2008 and 2009, Nick worked in-house for a multinational financial corporation in Tokyo, Japan and regularly represented multinational and foreign companies doing or seeking to do business in the U.S., or clients facing Dodd-Frank/Sarbanes-Oxley issues. He also had a background in healthcare and corporate law.

Jack Furey
1920-2016

Idaho’s most senior attorney, Jack B. Furey, died on July 16, 2016, at home with his family in attendance. Born December 9, 1920, Jack was the youngest of five children born to Sherman F. and Julia B. Furey. He received his earliest education in the one-room school at White Knob, where his mother taught. As a consequence, he was placed in charge of starting the daily fire in its wood
stove. He rode his horse bareback, “because it was warmer” to get there before the others.

Because his parents wanted him to have the best education available, they placed him with relatives in Los Angeles to attend ninth grade. While there, however, he also learned the art of rope-spinning, Will Rogers style, from a rodeo performer – and mastered the cello as well. He then returned to Idaho where he attended and graduated from Pocatello High School.

Self-taught with the drums, he took his percussive chops to the University of Idaho where he quickly immersed himself in the swing-era dance band scene, playing weekly gigs at the Student Union Building and the Moscow Elk’s hall. He was also the musical director of Sigma Chi fraternity and he was leader of the Vandal pep band. He was playing with the Joe Titus Orchestra in Lake Tahoe one summer when Titus was drafted, effectively ending Jack’s career as a professional musician.

Having met and married Nancy June Stafford, Jack completed law school in 1948 and returned to Custer County to establish roots. They bought a ranch at the mouth of the Pahsimeroi River and Jack ran against the incumbent county prosecutor. He won, by a margin of just seven votes, and thereafter built a successful law practice around that office.

Custer County Attorney for 17 years, Jack was instrumental in electrifying Custer County, bringing power to the Salmon River Electric Co-Op in 1959. He added on to the little house that came with the ranch. “It had no insulation and we’d wake up with frost on our pillows,” he said.

He dug a foundation by hand after the work day in town, and the family home took shape. There, they raised two children. He also ranched right along and developed much of the privately-owned real estate in the Stanley Basin (including the Shaw ranch, the Thousand Springs ranch, the Goat Falls ranch and the Obsidian, Iron Creek and Fisher Creek Subdivisions) with his partners Lou Racine and brother Sherm Furey, Jr.

Jack’s life was truly one well and fully lived and he will be sorely missed – not just by the family he loved but by nearly all with whom he came in contact over most of a century. Jack was preceded in death by his parents and siblings and leaves his beloved wife, Nancy June; his daughter, Kit; son, Pat and daughter-in-law “Tammikins”; and five grandchildren and three great grandchildren.

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IN MEMORIAM

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Spink Butler is pleased to announce that Mr. Wardle has joined their team of professionals. Drawing on his 20 years of experience in both the public and private arenas, Mr. Wardle will focus his practice at Spink Butler on commercial development, real estate, land use, entitlements, and transportation issues.

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Kelly A. Cameron named managing partner of Perkins Coie’s Boise office

BOISE — Perkins Coie announces that Kelly A. Cameron has been named managing partner of the firm’s Boise office. Kelly succeeds Robert Maynard, who served in the role since 2007. Perkins Coie’s Boise office opened in 1997.

“Kelly has an outstanding reputation in Boise for the exceptional legal counsel he provides his clients and his commitment to the community,” said John Devaney, Perkins Coie’s firmwide managing partner.

Kelly counsels clients on intellectual property and trade secrets, noncompetition and non-solicitation agreements, unfair competition claims and claims arising under the federal Computer Fraud and Abuse Act. He also represents employment and business clients in multi-party product liability litigation, complex commercial disputes, regulated investment advisor and broker litigation and contract disputes.

Kelly is active in pro bono work, having been involved in civil rights and constitutional litigation in federal District Courts, the United States Courts of Appeal and the Supreme Court of the United States. Kelly’s community involvement includes supporting Friends of Zoo-Boise (board member, 2011 - 2016) and Opera Idaho (board member, 2011 - 2016). He earned his J.D. from Washington and Lee University School of Law and received his B.A. from Brigham Young University.

Attorney Dana Hofstetter joins Hawley Troxell

BOISE — Hawley Troxell is pleased to announce that attorney Dana Hofstetter has joined the firm. Hofstetter is a transactional attorney specializing in business, real estate and renewable energy law.

“The addition of her water rights practice as well as her extensive experience in real estate and renewable energy will enable us to provide an even deeper level of service to our growing client base,” said managing partner Nicholas Miller.

In addition to her expertise in water and environmental law, Hofstetter has prior experience in land and resource management plan proceedings; advising on state and federal public land laws; public land approvals, including rights of way, permits, and land exchanges and disclaimers of interest.

Hofstetter received her J.D. and M.A. from the University Of California in Berkeley, California and her B.A. from Princeton University.

LaFranchi joins Andrade Legal as Fellow

BOISE — Attorney Courtney LaFranchi has joined the immigration firm Andrade Legal as an UC Davis Public Interest Legal Fellow.

Ms. LaFranchi’s work will focus upon supporting Central American and Mexican nationals seeking asylum who have been released from immigration detention facilities in cooperation with the Catholic Legal Immigration Network’s work with the CARA family detention pro bono project. Ms. LaFranchi will also work on the firm’s pro bono docket and policy work.

Ms. LaFranchi, a 2016 graduate of the UC Davis/King’s Hall School of Law, will work in the firm’s Boise and Ontario offices. Ms. LaFranchi is Andrade Legal’s second UC Davis Public Interest Legal Fellow.

New firm does mediation

BOISE — Brooke A. O’Neil and Sarah E. Scott, formerly with Finch & O’Neil Law Office, P.A., are pleased to introduce their new law and mediation firm, Law/Alternatives/PLLC. With a combined experience of almost 45 years, Brooke and Sarah specialize in family law (including adoption), guardianships/conservatorships, estate planning, trusts, elder law, and probate. Their mediation practice focuses on child custody disputes and elder care issues. Law/Alternatives/PLLC’s new office is located at 2404 Bank Drive, Suite 301, Boise, Idaho 83705. For more information, please visit the firm’s website, www.lawalternativesidaho.com, or call (208) 917-1161.
Western States Water Council Elects Jerry Rigby

REXBURG — Attorney Jerry R. Rigby, Andrus & Rigby Law, PLLC, who specializes in water rights, was recently elected as chair of the Western States Water Council (WSWC), which was created by western governors in 1965 to provide expert advice on water resources matters.

Rigby, a former chair of the Idaho Water Resource Board, is one of three Idaho representatives to the Council named by Governor Butch Otter.

Rigby is a second-generation representative and chair of the organization, following in the footsteps of his father, Ray W. Rigby.

The mission of the Council is to ensure that the West has an adequate, secure and sustainable supply of water of suitable quality to meet its diverse economic and environmental needs now and in the future.

“The impact of the Council on issues of interest to Idaho and Idaho’s water users should not be overlooked or undervalued,” said Rigby. “The combined voice of the 18 western states carries greater weight and influence than any single state alone, and that is why Idaho’s participation in the Council’s activities is so important. Idaho has greatly benefited from the work of the Council.”