

FLEXIBLE IRAC: A BEST PRACTICES GUIDE

Tracy Turner*

I. INTRODUCTION

Existing scholarship on the proper organization of a legal analysis is dominated by the IRAC paradigm and its numerous spin-offs.¹ IRAC stands for **I**ssue, **R**ule (i.e., discussion of the relevant law on an issue), **A**pplication (i.e., application of the law to the case at hand), and **C**onclusion.² The IRAC paradigm is based on an adaptation of deductive syllogism to legal reasoning:

Major Premise: All men are mortal. (The “R” in IRAC)
Minor Premise: Socrates is a man. (The “A” in IRAC)
Conclusion: Therefore, Socrates is mortal.³

Paradigms like IRAC are helpful tools for novice legal writers who are otherwise faced with a seemingly impossible task: identifying and imitating quality in a field of writing that is not blessed with consistency in either its quality or its form.⁴ On the other hand, some scholars have noted significant drawbacks in

*. © 2015, Tracy Turner. All rights reserved. Tracy Turner is the Director of the Legal Analysis, Writing, and Skills Program at Southwestern Law School. Thank you to Michelle Keshishi, Kevin Miller, and Schyler Silverman for their help on this Article and to Austen Parrish for his thoughtful comments.

1. See Tracy Turner, *Finding Consensus in Legal Writing Discourse Regarding Organizational Structure: A Review and Analysis of the Use of IRAC and Its Progenies*, 9 LEGAL COMM. & RHETORIC: JALWD 351 (2012) (discussing various alternative acronyms proposed by scholars and concluding that none of the alternative acronyms depart from the rules-first core of IRAC, which still dominates the discourse).

2. Many scholars advise legal writers to start with a conclusion rather than an issue statement, especially in persuasive writing. See *id.* at 359 (surveying the literature on whether legal writing should start with an issue or conclusion in objective writing). For ease of reference, this Article will treat “issue” as synonymous with “thesis” or “conclusion” and will use the IRAC paradigm as an umbrella term encompassing the numerous related paradigms such as CRAC, CREAC, TRAC, etc. See *id.* at 357 (listing all of the various acronyms that have been generated by legal writing professors).

3. E.g. CHARLES R. CALLEROS, LEGAL METHOD AND LEGAL WRITING 82 (7th ed. 2014); REID RAMBO & LEANNE J. PFLAUM, LEGAL WRITING BY DESIGN 20–21 (2d ed. 2013).

4. Turner, *supra* note 1, at 351–52 n.2 (listing forty published articles that have discussed the benefits of paradigms).

overemphasizing paradigms like IRAC in legal writing courses,⁵ and a smaller number have suggested that practitioners do not write in a rigid IRAC structure.⁶ This Article aims to reconcile some of the conflict by illustrating that IRAC does not need to be rigid and can be taught as a flexible concept that is relevant to practice.

IRAC needs to be flexible because few legal questions can be evaluated by a single rule paragraph and a single application paragraph. Legal writers must often decide how to sequence multiple rule paragraphs and multiple application paragraphs.⁷

5. See, e.g., Marion W. Benfield, Jr., *IRAC—An Undesirable Formula*, 10 SECOND DRAFT (newsltr. of the Legal Writing Inst.), Nov. 1995, at 17 (criticizing IRAC for “encourage[ing] awkward, simplistic writing”); Soma R. Kedia, *Redirecting the Scope of First-Year Writing Courses: Toward a New Paradigm of Teaching Legal Writing*, 87 U. DET. MERCY L. REV. 147, 170–75 (2010) (arguing that IRAC fails to teach flexibility and creativity); Allen Mendenhall, *The Importance of Being Earnest: A Serious Proposal to Modify Legal Research and Writing Departments*, 2007 W. VA. LAW., Sept./Oct. 2007, at 32, 32–33 (concluding that the use of a structure like IRAC inhibits writers who feel they need to “fit” their thoughts into the formula); Nancy P. Spyke, *Thoughts on the Use of IRAC in Teaching Analysis*, 10 SECOND DRAFT, Nov. 1995, at 16 (arguing that IRAC should not be taught as a method of organizing legal writing because it lacks sophistication); Christine M. Venter, *Analyze This: Using Taxonomies to “Scaffold” Students’ Legal Thinking and Writing Skills*, 57 MERCER L. REV. 621, 624–26 (2006) (arguing that paradigms are too limited to allow analytical skills to develop); Amy Vorenberg & Margaret Sova McCabe, *Practice Writing: Responding to the Needs of the Bench and Bar in First-Year Writing Programs*, 2 PHOENIX L. REV. 1, 25–27 (2009) (urging de-emphasis of paradigms and more discussions with students about “what analytical content the legal reader needs and the best way to provide it”); Manning Warren, *IRAC Response*, 10 SECOND DRAFT, Nov. 1995, at 19 (concluding that IRAC erroneously encourages students “to [fit] printed facts into [a] form-fitted legal construct” rather than to “think about what is really going on” in the case); see also Dianne Kraft, *CREAC in the Real World*, 63 CLEVELAND ST. L. REV. ____ (forthcoming 2015) (manuscript at 7 nn.31–36), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2534359## (summarizing criticisms of IRAC).

6. Benfield, *supra* note 5, at 17 (noting that he reviewed two Cardozo opinions that both mix facts, ideas, conclusions, and common sense with discussion of the law); Vorenberg & McCabe, *supra* note 5, at 17–19 (reporting that of three briefs the authors asked seven judges to rate, an integrated brief received a higher average score and that “several judges” commented in interviews that “where a particular legal issue is settled and is frequently before the court,” there is no need for a separate explanation of the law before the analysis of the facts of the particular case); see also Kraft, *supra* note 5, at 8 nn.37–38 (summarizing commentary on the lack of a focus on paradigms in practice).

7. Although terminology varies in the literature, this Article will use the term “rule paragraphs” to refer to paragraphs that discuss the law and “application paragraphs” to refer to paragraphs that apply the law to the facts of the case at hand. The Article does not differentiate between rule paragraphs that provide an overview of the rules (sometimes referred to in the literature as rule statement or rule summary) and those that provide proof or explanation of a specific point of law (sometimes referred to in the literature as rule proof or rule explanation). Its samples include only rule proof/rule explanation paragraphs. The inclusion of rule statement as part of IRAC is discussed in TRACY TURNER, *LEGAL WRITING FROM THE GROUND UP* 113, 116–17 (2015). For additional re-

As legal writing scholars have struggled with how to advise students to apply IRAC in more complex analyses, variations in IRAC have emerged in legal writing textbooks. Although scholars appear to have a consensus that separate issues and elements should have separate IRAC sequences,⁸ the organization of rule paragraphs and application paragraphs within a single IRAC sequence is far less settled. For example, while some scholars urge that rule paragraphs within a single IRAC sequence be kept together and precede the application of the law (an IRRRAAC⁹ structure),¹⁰ others advise writers to alternate between rule paragraphs and application paragraphs (an IRARARAC structure).¹¹ Unfortunately, these necessary variations of IRAC are often isolated from one another in the literature. As a result, legal writing professors may latch onto only one iteration of IRAC rather than teaching it as a flexible concept.

sources on rule statement, see Turner, *supra* note 1, at 360 n.40.

8. MARY BETH BEAZLEY, A PRACTICAL GUIDE TO APPELLATE ADVOCACY 89 (4th ed. 2014); CALLEROS, *supra* note 3, at 261–62; BRADLEY G. CLARY & PAMELA LYSAGHT, SUCCESSFUL LEGAL ANALYSIS AND WRITING: THE FUNDAMENTALS 93–94 (3d ed., West 2010); LINDA H. EDWARDS, LEGAL WRITING: PROCESS, ANALYSIS, AND ORGANIZATION 132–33 (6th ed. 2014); MICHAEL D. MURRAY & CHRISTY HALLAM DESANCTIS, ADVANCED LEGAL WRITING AND ORAL ADVOCACY: TRIALS, APPEALS, AND MOOT COURT 232–35, 558–59 (2d ed. 2014); RICHARD K. NEUMANN, JR., LEGAL REASONING AND LEGAL WRITING 163–64 (7th ed. 2013); DIANA V. PRATT, LEGAL WRITING: A SYSTEMATIC APPROACH 185–94 (5th ed. 2015); RAMBO & PFLAUM, *supra* note 3, at 28; MARY BARNARD RAY, THE BASICS OF LEGAL WRITING 77, 80 (rev'd 1st ed. 2008); DEBORAH A. SCHMEDEMANN & CHRISTINA L. KUNZ, SYNTHESIS: LEGAL READING, REASONING, AND WRITING 101 (4th ed. 2014); HELENE S. SHAPO ET AL., WRITING AND ANALYSIS IN THE LAW 113, 135–37 (6th ed. 2013); ROBIN WELLFORD SLOCUM, LEGAL REASONING, WRITING, AND OTHER LAWYERING SKILLS 161 (3d ed. 2011); Lurene Contento, *Demystifying IRAC and Its Kin: Giving Students the Basics to Write “Like a Lawyer”*, 21 SECOND DRAFT, Dec. 2006, at 8, 8–9; Christina Kunz & Deborah Schmedemann, *Our Perspective on IRAC*, 10 SECOND DRAFT, Nov. 1995, at 11, 11–12.

9. This Article uses IRRRAAC rather than IRAC because it addresses organization of analyses that include multiple rule paragraphs and multiple application paragraphs. For consistency, the other acronyms used in this Article will similarly assume three rule paragraphs and three application paragraphs: IRARARAC and IRAIRAIRAC. The acronyms are not meant to suggest that all analyses must have exactly three rule paragraphs and application paragraphs.

10. EDWARDS, *supra* note 8, at 132–36; NEUMANN, *supra* note 8, at 145–48; see also MICHAEL R. FONTHAM ET AL., PERSUASIVE WRITTEN AND ORAL ADVOCACY IN TRIAL AND APPELLATE COURTS 20–21 (3d ed. 2013) (providing an organizational outline that keeps rule paragraphs together); NADIA E. NEDZEL, LEGAL REASONING, RESEARCH, AND WRITING FOR INTERNATIONAL GRADUATE STUDENTS 322–23 (3d ed. 2012) (suggesting that keeping rule paragraphs together should be the default structure).

11. RAY, *supra* note 8, at 79–80; SLOCUM, *supra* note 8, at 208–09, 211–13. In addition, the following texts offer samples that follow an IRARARAC structure: RAMBO & PFLAUM, *supra* note 3, at 541–632; SCHMEDEMANN & KUNZ, *supra* note 8, at 103–04; SHAPO ET AL., *supra* note 8, at 147–48.

This Article seeks to free IRAC from its shackles by synthesizing the literature to create a “best practices guide” to IRAC. It identifies variations in IRAC using a common vocabulary, explains the strategic considerations that should play a role in selecting the right organization for a particular legal analysis, and ultimately aims to synthesize existing scholarship on organization to provide a flexible understanding of IRAC without sacrificing the usefulness of the paradigm.¹²

When I first began to think about writing this Article, I expected to propose alternatives to IRAC. However, as I reviewed briefs and textbooks in preparation for writing the Article,¹³ I discovered that good legal writers continue to hold on to the core of IRAC: syllogistic reasoning. Instead of abandoning IRAC, I concluded that identifying its more sophisticated adaptations and

12. The Author’s textbook incorporates the synthesis discussed in this Article. TURNER, *supra* note 7, at 108–50. The Oates & Enquist textbooks have taken a structured approach to alternatives too. In *The Legal Writing Handbook*, the authors present multiple models and templates including a “script format” model (essentially IRRRAAAC), an “integrated model” (bears some similarity to the IRAIRAIRAC model discussed later in this Article), and varying templates for factor-based analyses, balancing analyses, and analyses aimed at addressing questions of first impression note LAUREL CURRIE OATES & ANNE ENQUIST, *THE LEGAL WRITING HANDBOOK: ANALYSIS, RESEARCH, AND WRITING* 156–91, 225–38, 247–62 (6th ed. 2014). In *Just Briefs*, the authors present three different types of reasoning that can be used in crafting an effective argument: deductive (essentially IRRRAAAC), inductive (same as the “integrated model” from the *Handbook*) and “facts first” (an approach that seems to be similar to the narrative adaptation of IRAC discussed later in this Article). LAUREL CURRIE OATES ET AL., *JUST BRIEFS* 35–38 (3d ed. 2013).

13. I reviewed sample memoranda and briefs in textbooks that did not teach a strict IRRRAAAC structure: BEAZLEY, *supra* note 8; CALLEROS, *supra* note 3; VEDA R. CHARROW ET AL., *CLEAR AND EFFECTIVE LEGAL WRITING* (5th ed. 2013); CLARY & LYSAGHT, *supra* note 8; JOHN C. DERNBACH ET AL., *A PRACTICAL GUIDE TO LEGAL WRITING & LEGAL METHOD* (5th ed. 2013); MURRAY & DESANCTIS, *supra* note 8; NEDZEL, *supra* note 10; OATES & ENQUIST, *supra* note 12; AUSTEN L. PARRISH & DENNIS T. YOKOYAMA, *EFFECTIVE LAWYERING: A CHECKLIST APPROACH TO LEGAL WRITING & ORAL ARGUMENT* (2d ed. 2012); PRATT, *supra* note 8; RAMBO & PFLAUM, *supra* note 3; RAY, *supra* note 8; KRISTEN KONRAD ROBBINS-TISCIONE, *RHETORIC FOR LEGAL WRITERS: THE THEORY AND PRACTICE OF ANALYSIS AND PERSUASION* 244 (2009); SCHMEDEMANN & KUNZ, *supra* note 8; NANCY L. SCHULTZ & LOUIS J. SIRICO, JR., *LEGAL WRITING AND OTHER LAWYERING SKILLS* (6th ed. 2014); SHAPO ET AL., *supra* note 8; SLOCUM, *supra* note 8. I also reviewed several briefs I had written as a practicing lawyer before I had ever heard of IRAC, additional briefs written by lawyers whose writing I admired, and thirty-seven briefs I obtained through Westlaw and Lexis. I chose the Westlaw and Lexis briefs by searching federal court databases for opinions that had complimented the briefs submitted by the parties and then accessing the complimented briefs if they were available online. The thirty-seven briefs were of varying quality. Some were truly good; others were not. Therefore, I do not claim that this Article is a rigorous empirical study of IRAC variations. Instead, I used the briefs to help formulate my thoughts about the modifications and strategies discussed in the Article.

nuances was the better approach. This Article thus identifies and illustrates the following adaptations of IRAC: (1) one-sequence IRAC (IRRRAAAC); (2) alternating IRAC (IRARARAC); (3) IRAC by paragraph (IRA-IRA-IRA-C); and (4) the IRAC sentence.¹⁴ To enable legal writers to make intelligent organizational choices, the Article will address the benefits and drawbacks of each adaptation. In addition, the Article will discuss the addition of narrative details into the IRAC structure—a common technique in practice that is often discouraged by rigid adherence to IRAC. The final section of the Article also demonstrates how the various adaptations, with added narratives, can be integrated within a single brief or memorandum. Admittedly, not every textbook sample and court brief I reviewed fit precisely into one of these adaptations. Instead, these adaptations represent my synthesis of the variations in structure I observed. In addition, they represent some judgment on my part of the quality of the samples and briefs I reviewed. In other words, these adaptations describe best practices used in the highest quality samples and briefs.

II. BASELINE RULES OF EFFECTIVE ORGANIZATION

Before delving into the details of alternative organizational structures, legal writers should understand some basic rules of effective organization. First, experts on composition have recognized two key principles of paragraph organization: (1) paragraphs should usually begin with a topic sentence that states the point the paragraph will address, and (2) the body of a paragraph should relate to the topic sentence.¹⁵ Because these rules have been in play for nearly 150 years,¹⁶ legal writers

14. I use a sequence of three to illustrate the differences between the first three structures but not to suggest that a writer has to use this exact number. In fact, in the one-sequence structure, the number of rule paragraphs and application paragraphs do not need to match. For example, a one-sequence structure could look more like IRRRAC, IRAAAC, or any other combinations. Its key attribute, as explained in the relevant section below, is that the rule paragraphs are kept together rather than alternating between rule paragraphs and application paragraphs.

15. ALEXANDER BAIN, ENGLISH COMPOSITION AND RHETORIC 150–52 (Scholars' Facsimiles & Reprints 1996) (1871) (establishing six rules of paragraph structure including the need for topic sentences and unity of theme within a paragraph); see also Ned A. Shearer, *Alexander Bain and the Genesis of Paragraph Theory*, 58 Q.J. of Speech 408, 413 (1972) (summarizing Bain's six rules of paragraph structure).

16. See Paul C. Rodgers, *Alexander Bain and the Rise of the Organic Paragraph*, 51 Q.J. of Speech 399 (1965) (describing the pervasive influence of Bain's six rules of paragraph structure).

should strive to conform to them.¹⁷ In addition, each paragraph should be complete: the body of the paragraph should adequately prove the topic sentence.¹⁸ Adhering to these basic principles, this Article does not propose any structures or provide any samples that would encourage either (1) splitting the proof of a topic sentence into more than one paragraph or (2) addressing two or more points within a single paragraph without a uniting topic sentence.

Another widely recognized principle is that legal writers should synthesize the law rather than draft an analysis as a list of case summaries.¹⁹ Accordingly, the organizational choices this Article presents are not intended to encourage a case-by-case organization rather than a rule-based organization. The samples attempt to model case synthesis and rule-based organization under each alternative structure discussed.

A. The One-Sequence IRAC (IRRRAAC)

The one-sequence structure provides an initial statement of the sub-issue, conclusion, or thesis followed first by a complete discussion of the law relevant to the sub-issue (often, multiple rule paragraphs) before the law is applied to the case at hand in subsequent application paragraph(s).²⁰ Finally, a wrap-up of the

17. On the use of topic sentences in legal writing, see BEAZLEY, *supra* note 8, at 233–37; CALLEROS, *supra* note 3, at 267–68; DERNBACH ET AL., *supra* note 13, at 204–05; EDWARDS, *supra* note 8, at 88–90; MURRAY & DESANCTIS, *supra* note 8, at 39; NEDZEL, *supra* note 10, at 229–30; NEUMANN, *supra* note 8, at 187–90; OATES & ENQUIST, *supra* note 12, at 563–67; RAMBO & PFLAUM, *supra* note 3, at 110–11; SHAPO ET AL., *supra* note 8, at 139–41, 203–09.

18. JOSEPH F. TRIMMER, *THE NEW WRITING WITH A PURPOSE* 189, 193–95 (14th ed. 2004). I use the term “topic sentence” narrowly to mean the exact point that the particular paragraph sets out to prove. Often several paragraphs will work together to prove a broader point, but each has its own specific purpose.

19. CALLEROS, *supra* note 3, at 332–37; DERNBACH ET AL., *supra* note 13, at 61–68, 178–183; EDWARDS, *supra* note 8, at 51–53; FONTHAM ET AL., *supra* note 10, at 58–61; MURRAY & DESANCTIS, *supra* note 8, at 132, 135–60; NEDZEL, *supra* note 10, at 222–23; NEUMANN, *supra* note 8, at 114–16; OATES & ENQUIST, *supra* note 12, at 169–76; RAMBO & PFLAUM, *supra* note 3, at 76–77; RAY, *supra* note 8, at 96–97 (discussing synthesis in the annotations to a sample); ROBBINS-TISCIONE, *supra* note 13, at 139–50; SCHMEDEMANN & KUNZ, *supra* note 8, at 36–42; SHAPO ET AL., *supra* note 8, at 78–83, 147–48; SLOCUM, *supra* note 8, at 187–202; MICHAEL R. SMITH, *ADVANCED LEGAL WRITING: THEORIES AND STRATEGIES IN PERSUASIVE WRITING* 38–47, 71–76 (3d ed. 2013).

20. See, e.g., BEAZLEY, *supra* note 8, at 359–74, 386–91; CALLEROS, *supra* note 3, at 255–56, 263; EDWARDS, *supra* note 8, at 134–36; FONTHAM ET AL., *supra* note 10, at 20–21; MURRAY & DESANCTIS, *supra* note 8, at 568–77; NEDZEL, *supra* note 10, at 322–23; NEUMANN, *supra* note 8, at 145–48; PRATT, *supra* note 8, at 185–94; SLOCUM, *supra* note 8,

point concludes the sequence.²¹ To understand this structure, legal writers can picture a line drawn between the portion of the analysis that discusses the law and the portion that applies the law to the case at hand.

Sample One-Sequence IRAC²²

- A. The Government's Conduct Was Not Outrageous Because It Was Designed to Intercept Active Terrorists Rather Than to Target Defendant for Prosecution.

I

The government did not single out Defendant and pursue her conviction at all costs. To the contrary, Defendant was drawn into the planned bombing by her own terrorist organization.

R

Although courts have suggested that outrageous conduct may be established where the government manufactured the crime from start to finish, e.g., *United States v. Bogart*, 783 F.2d 1428, 1436 (9th Cir. 1986), courts have declined to bar convictions even when the criminal plan was entirely initiated and controlled by the government but was part of a general sting operation to which the defendant was drawn on his own accord. In *Morgan v. Robinson*, 156 F. Supp. 2d 1133, 1148 (C.D. Cal. 2001), for example, the court upheld a conviction even though the government initiated the crime and managed it from start to finish and even though the defendant had not engaged in similar crimes before. . . [full discussion omitted here].

R

Sting operations aimed at a preexisting criminal organization do not offend the universal sense of justice. Indeed, they further justice because they are designed to protect the public by catching those predisposed to commit crime.

at 208–11 .

21. CALLEROS, *supra* note 3, at 223; CLARY & LYSAGHT, *supra* note 8, at 92; EDWARDS, *supra* note 8, at 132–33; NEUMANN, *supra* note 8, at 145.

22. This and all other samples in the Article are my own work adapted to model the IRAC variations that I observed in the textbooks and briefs in my research.

See *United States v. Williams*, 547 F.3d 1187, 1201 (9th Cir. 2008) (stating that the fake robbery set up through the government’s sting operation should be commended rather than condemned because it avoided harm to the public from the real robbery defendants would have otherwise committed). Accordingly, courts are less likely to reverse a conviction where the defendant’s conduct reveals she was predisposed to the crime. In *Mitchell*, . . . [full discussion omitted here].

R

By contrast, the cases in which courts have reversed convictions on due process grounds involve not sting operations that target criminal organizations but the targeting of a specific individual without reason to suspect the individual is currently engaged in similar criminal activity. See *United States v. Twigg*, 588 F.2d 373, 381 (3d Cir. 1978) (holding that government violated due process when it asked informant to reestablish contact with an acquaintance who was not engaged in any illicit drug activity and agent thereafter “implanted the criminal design” in the defendant’s mind and enabled him to carry it out). . . . [full discussion omitted here]. When the government targets a specific defendant without reason to suspect he is engaged in criminal activity, the motive appears to be to secure a conviction rather than to protect the public from criminal activity. See *Twigg*, 588 F.2d at 381 (stating that agent’s conduct was offensive because it “generated new crimes by the defendant merely for the sake of pressing criminal charges against him when . . . he was lawfully and peacefully minding his own business”) . . . [full discussion omitted here].

R

The Ninth Circuit explored the difference between a legitimate sting operation and the illegitimate targeting of an apparently innocent defendant in *United States v. Luttrell*, 889 F.2d 806, 813–14 (9th Cir. 1989). In *Luttrell*, . . . [full discussion omitted here].

A

Here, Forrest’s conviction is squarely within due process grounds for at least two reasons. First, she was caught as the result of a general undercover investigation

that did not target her specifically but, instead, was aimed more widely at her known terrorist organization. Second, even if she had been targeted specifically, her active participation in a known terrorist organization would be a sufficient ground to investigate her. Morlandia did not target Forrest and convince her to commit a crime for the purpose of obtaining her conviction. Rather, her conviction resulted from a general undercover operation designed to protect the public by thwarting the terrorist activities of her organization. The FBI set up the operation as a wide web to catch whatever criminal conduct came its way much like the sting operation in *Morgan*. Because it targeted a known criminal operation, the FBI's undercover operation has a "settled place in law enforcement." *Id.* Forrest became caught in the web because of her prior involvement in EARTH's terrorist activities. EARTH's leadership wanted Forrest to assist in the bombing to evaluate her worth to the organization. (R. at 31). Thus, Forrest was targeted by her own criminal organization and not by the FBI. Morlandia's role in initiating and planning the bombing was designed to earn the trust of EARTH's leadership by demonstrating he could "motivate" (R. at 30); Forrest's conviction was not the goal, (R. at 20). Therefore, this is not a case where the government got lucky and obtained a conviction in an otherwise arbitrary effort to induce innocent citizens to commit crimes. Moreover, even if the facts had been different and Morlandia had selected Forrest himself, Forrest's active participation in a known terrorist organization made her an entirely appropriate target of the undercover operation. She was not "lawfully and peacefully minding [her] own business." *Twigg*, 588

C

F.2d at 381. Accordingly, Morlandia's role in approaching Forrest about the bombing and planning it does not warrant reversal of the conviction.²³

1. *Benefits of Using the One-Sequence IRAC*

A number of textbooks either teach the one-sequence organization exclusively²⁴ or treat it as the default structure of an analysis.²⁵ The preference is not without reason.

The one-sequence structure captures the need for the law to be synthesized for the reader. In the analysis of a legal issue that involves any degree of complexity, synthesis becomes essential, and the one-sequence structure aids synthesis. The points of law presented in the above sample included the following: (1) outrageous conduct is a valid defense when the government manufactures the crime from start to finish; (2) outrageous conduct is not a valid defense when the government initiates and controls a crime as part of a general sting operation to which the defendant was drawn on his own accord; (3) a defendant's willing participation in the crime can negate the defense; and (4) the government cannot target a specific individual without reason to suspect the individual is currently engaged in criminal activity. If each of these statements were presented and applied separately in an alternating IRAC structure (IRARARAC), the reader might have trouble deciphering how each piece of the puzzle fits with the others. Even if the writer were cognizant of the need to make the connections, the separation of each point would make the

23. A full version of this sample is available in TURNER, *supra* note 7, at 366–83. For additional IRRRAAAC samples, see BEAZLEY, *supra* note 8, at 359–74, 386–91; CLARY & LYSAGHT, *supra* note 8, at 225–29 (in a twist on IRRRAAAC, the author devotes sections A and B to discussing the law and then devotes section C to the application); EDWARDS, *supra* note 8, at 368–78, 399–404; MURRAY & DESANCTIS, *supra* note 8, at 568–77; NEDZEL, *supra* note 10, at 341–43, 398–99; OATES & ENQUIST, *supra* note 12, at 121–25 (with the exception of section B, on page 122, this sample follows IRRRAAAC), 498–502 (sec. A), 505–506 (sec. B(2)); TURNER, *supra* note 7, at 110–13, 119–23, 394–405.

24. EDWARDS, *supra* note 8, at 134–36; FONTHAM ET AL., *supra* note 10, at 20–21 (providing an organizational outline that keeps rule paragraphs together); NEUMANN, *supra* note 8, at 145–48; MURRAY & DESANCTIS, *supra* note 8, at 568–77 (exclusively presenting samples that keep rule paragraphs together).

25. NEDZEL, *supra* note 10, at 322–23 (suggesting that keeping rule paragraphs together should be the default structure).

connections challenging to draft. By exploring all four concepts together, the one-sequence structure followed in the sample enables explicit, clear connections. The ease of synthesis between concepts makes the one-sequence structure a particularly good fit when the author wants to explore the evolution of the law on a topic as the sample does when it explains that the Ninth Circuit recently recognized the divide between sting operations and the unwarranted targeting of individuals that earlier cases implicitly established.

Finally, in a one-sequence structure, the application of related legal principles can be combined to avoid repetition. As in the sample above, the writer can use several paragraphs to explain the related legal principles and then apply them together rather than one by one. An alternating IRAC structure, by contrast, contemplates a matching application paragraph for each rule paragraph and can, therefore, lead to undesirable repetition. In the sample above, the same facts that proved the government's involvement was part of a sting operation also proved that Forrest was not targeted as an individual. An alternating IRAC structure would have led to separate, repetitive application paragraphs or, at least, an awkward cross-reference to the earlier points.²⁶ Because the problem of repetition arises in an alternating structure but not in a one-sequence structure, the one-sequence structure is a more universally adaptable structure. It may not always be the *best* option, but it is always a workable option.²⁷

26. Of course, alternatives may exist. Perhaps the writer could consolidate the rule paragraph on sting operations with the rule paragraph on targeting individuals in an alternating IRAC structure to permit both concepts to be addressed in a single application paragraph. However, the writer would run the risk of an overloaded rule paragraph that would be too difficult to read. Some might propose that the writer could use two rule paragraphs to discuss the two legal principles, then a single application paragraph that applies them simultaneously, then a new rule paragraph to start a new RA (rule paragraph-application paragraph) sequence. This alternative would fall under the flexible IRAC model I present at the end of the Article.

27. Mary Beth Beazley, *Desirable! Fire, Flood, Famine & IRAC?*, 10 SECOND DRAFT, Nov. 1995, at 1 ("IRAC is almost always a valid way—although not necessarily the only way—to organize legal analysis"); Charles Calleros, *IRAC: Tentative and Flexible and Therefore Reliable*, 10 SECOND DRAFT, Nov. 1995, at 4 ("IRAC provides an analytic framework that is illuminating or persuasive in most legal analyses or arguments").

2. Limitations of the One-Sequence IRAC

The risk of the one-sequence structure is an R1, R2, R3, etc. sequence that is so long and complex that the reader will forget the nuances by the time she gets to the application paragraphs. The risk can be minimized by using separate headings for all separable sub-issues addressed in an analysis.²⁸ For example, if the analysis explores a crime with four elements, each element should have its own IRAC sequence and its own heading.²⁹ Some elements may be sufficiently simple for one rule explanation and one application while others may look more like IRRRAAC, IRRRAC, IRAAAC, etc. Similarly, if any one element involves the analysis of separable factors, each factor should have its own IRAC sequence and its own subheading.³⁰ A factor is separable if its applicability to the case at hand does not rely on other factors and if it is sufficiently distinct from other factors that its application involves different factual considerations.³¹ The sample

28. Regarding the use of headings for separate IRAC sequences, see BEAZLEY, *supra* note 8, at 89; CALLEROS, *supra* note 3, at 360 (calling for headings for each issue); CLARY & LYSAGHT, *supra* note 8, at 93–94; FONTHAM ET AL., *supra* note 10, at 46 (advising separate sequences by argument); MURRAY & DESANCTIS, *supra* note 8, at 41, 232–35, 558–59, (endorsing separate sequences for a rule that presents multiple questions to answer); OATES & ENQUIST, *supra* note 12, at 157–58 (suggesting headings for each sequence); ; SLOCUM, *supra* note 8, at 161–63 (requiring headings); *see also* EDWARDS, *supra* note 8, at 129–36 (endorsing separate sequences for sub-issues unless the courts tend to take a more “unified view” on the issue). *But see* CLARY & LYSAGHT, *supra* note 8, at 94 (cautioning that too many IRACs may lose the big picture and suggesting that the writer vary the sequence to occasionally omit the issue or conclusion to avoid monotony). The separation of IRRRAAC sequences by heading requires the use of initial umbrella or roadmap paragraphs to introduce the subdivisions of the analysis. Umbrella/roadmap paragraphs are beyond the scope of this Article but are explained and illustrated in several textbooks. *See, e.g.*, BEAZLEY, *supra* note 8, at 239–46; EDWARDS, *supra* note 8, at 130–33, 287–90; MURRAY & DESANCTIS, *supra* note 8, at 233; ROBBINS-TISCIONE, *supra* note 13, at 218; SCHULTZ & SIRICO, *supra* note 13, at 76–77; SLOCUM, *supra* note 8, at 222–25.

29. BEAZLEY, *supra* note 8, at 89 (advising an IRAC for each element or issue); CALLEROS, *supra* note 3, at 223–24, 255–56 (describing separate IRACs for separate issues and subissues as the most widely used structure), 226–28 (including, in a sample, separate IRACs for separate elements of negligence); EDWARDS, *supra* note 8, at 130–33 (advising writers to lay out the elements in the umbrella paragraph and then IRAC them one-at-a-time with a heading for each); MURRAY & DESANCTIS, *supra* note 8, at 558 (stating that subissues require a separate IRAC).

30. *See* RAY, *supra* note 8, at 110–13 (including a sample memo that uses headings for each sequence and an annotation stating that subheadings “can be helpful” when the discussion is divided by sub-issue).

31. *See* PARRISH & YOKOYAMA, *supra* note 13, at 39 (stating that the argument section of a brief should be divided into headings that each give an “independent reason” for the author’s conclusion).

above, for example, was from one section of a brief. The rule explanations were kept together within the same heading because they all led up to the point that the government's conduct was acceptable because it was part of a sting operation. By contrast, separate sections of the brief with separate headings addressed other factors such as the government's efforts to avoid participation in an actual crime and the lack of coercion by the government agent.

Although headings can avoid overly long R sequences in the one-sequence structure, such a division of the analysis may not always be desirable. In factor-balancing analyses, the separation of factors by heading may inhibit the writer's ability to weigh conflicting factors or to unify supportive factors. As explained in the next section, the alternating structure may offer unique benefits in factor-balancing analyses.

B. Alternating IRAC (IRARARAC)

In contrast to the one-sequence IRAC, an alternating IRAC places each application paragraph right after the corresponding rule paragraph so that a principle of law is applied as soon as it is introduced.³²

Sample Alternating IRAC

I

The court is unlikely to strike one of Romano's prior convictions because Romano's criminal history falls within the spirit of the three strikes scheme.

R

When the nature and circumstances of a defendant's present felony are identical to his prior felonies, the priors should not be stricken because the defendant has failed to "learn his lesson." *Compare People v. Williams*, 948 P.2d

32. RAMBO & PFLAUM, *supra* note 3, at 539–632; RAY, *supra* note 8, at 79–80; SHAPO ET AL., *supra* note 8, at 147–48; SLOCUM, *supra* note 8, at 211–13, 590–91, 600–02, 616–20; *see also* SCHMEDEMANN & KUNZ, *supra* note 8, at 103–05 (providing a sample that alternates between rules and application).

429, 438 (Cal. 1998) (affirming the appellate court's finding that where defendant's current conviction for driving under the influence mirrored his prior convictions of the same offense, the trial court's decision to strike the priors was an abuse of discretion), *with People v. Cluff*, 105 Cal. Rptr. 2d 80, 87 (Ct. App. 2001) (stating that the defendant's present felony of failing to update his sex offender registration did not prove recidivist tendencies toward child molestation and, therefore, did not prevent the striking of a prior).

A

In the instant case, all of Romano's previous thefts were committed while he was high on meth. Now he has once again committed a theft while high. Romano has not "learned his lesson," but instead is continuing both his willingness to steal and the addiction that underlies his criminal activity. He is exactly the type of recidivist the three strikes law targets.

R

Another consideration is the seriousness of the present felony. *Compare People v. Burgos*, 12 Cal. Rptr. 3d 566, 572 (Ct. App. 2004) (finding dismissal of a prior was required where two of the defendant's three strikes—using fear to obtain shoes from one fellow detainee and kicking another—were not "the worst of crimes"), *with People v. Myers*, 81 Cal. Rptr. 2d 564, 566 (Ct. App. 1999) (holding that the trial court did not abuse its discretion when it declined to strike priors that involved arson and armed robbery). In general, non-violent crimes are less serious than violent crimes. *Compare People v. Bishop*, 66 Cal. Rptr. 2d 347, 349–50 (Ct. App. 1997) (noting that the defendant's petty theft conviction operated as a mitigating factor), *with People v. McGlothin*, 79 Cal. Rptr. 2d 83, 87 (Ct. App. 1998) (holding that trial court erred in striking a prior when defendant's most recent crime involved a physical attack on two elderly individuals). However, the non-violent nature of a felony does not necessarily warrant saving the defendant from a three strikes sentence. *See People v. Strong*, 104 Cal. Rptr. 2d 490, 501 (Ct. App. 2001) (stating that the intent of the three strikes law is "to ensure longer prison sentences" for defendants who have a qualifying strike and subsequently commit "*any felony*,"

whether violent or not, and finding that the defendant's fraudulent sale of fake illicit drugs fell within the spirit of the three strikes law because it could have led to violence if arguments with the buyers had ensued).

A

Here, Romano did not commit any violence in carrying out the robbery and did not have a weapon. At first blush, his current crime may not seem any more serious than the crimes in *Burgos*. However, Romano sufficiently intimidated the drug store staff to obtain the two bottles of prescription drugs he intended to steal. Moreover, just as the crime in *Strong* could have escalated into violence if one of the potential buyers discovered the defendant's deceit, Romano's robbery could have escalated into violence if one of the staff members or a customer had decided to take action to prevent his theft.

C

In light of the recidivist nature of his drug-induced theft crimes and the risk of violence associated with his current crime, Romano remains a danger to society. The court is unlikely to conclude that he is worthy of a lesser sentence.³³

1. Benefits of Alternating IRAC

The alternating IRAC structure offers the benefit of applying a factor or element immediately after it is introduced and explained. Imagine that the three strikes issue from the above sample involved two or three additional factors. It would be difficult for the reader to digest four or five factors in a one-sequence (IRRRAAAC) structure and then recall all of the information from the rule paragraphs when the author finally

33. For additional examples of IRARARAC, see CLARY & LYSAGHT, *supra* note 8, at 203–05 (sec. C); OATES & ENQUIST, *supra* note 12, at 122 (sec. B), 503–05 (sec. B(1)); RAY, *supra* note 8, at 95–98, 187–189 (sec. B); SCHMEDEMANN & KUNZ, *supra* note 8, at 104–06; SHAPO ET AL., *supra* note 8, at 147–48, 580–84 (through pt. III); SLOCUM, *supra* note 8, at 590–91, 600–02, 616–20; ROBERT BARR SMITH, *THE LITERATE LAWYER: LEGAL WRITING AND ORAL ADVOCACY* 91–98 (4th rev'd ed. 2009); TURNER, *supra* note 7, at 362–64.

moves on to applying the factors.³⁴ Although, as discussed in the prior section of this Article, the use of headings can avoid such overly long rule sections in the one-sequence structure, the alternating structure offers at least a couple of key benefits in certain types of analyses.

First, in factor-balancing analyses, the alternating IRAC structure allows the writer to connect different factors at the end of the section. In the above sample, the last sentence (the “C” in IRARARAC) brings both factors together for a powerful end to this section of the analysis: “In light of the recidivist nature of his drug-induced theft crimes and the risk of violence associated with his current crime, Romano remains a danger to society.” Separate IRAC sequences with separate headings would have left each supporting factor isolated in its respective section. While a possible solution in a one-sequence IRAC would be to bring the two factors together in the conclusion section of the memorandum, the presence of other intervening sections would make this less than ideal. The sample memorandum from which I took this excerpt had two additional sections I have not included here, one addressing the seriousness of the defendant’s prior crimes and the other addressing social factors that helped predict the future recidivism of the defendant. A one-sequence structure, therefore, may not have been as effective as the alternating IRAC structure modeled above because by the time the reader reached the final “Conclusion” section of the memorandum, her recollection of the writer’s points about the similarity of the past and present crimes and the severity of the present crime would be diminished by the intervening pages of analysis in the other two sections of the memorandum. The punch would be lost. By contrast, the alternating structure brought these two points together immediately before moving on to other factors.

Second, the alternating IRAC structure can be strategic. When one or more of the RA sequences relates to a counterargument, the author may not want to highlight the adverse points with separate headings and separate IRAC sequences, a result

34. NEDZEL, *supra* note 10, at 326 (nothing that when more than two factors are involved, if the writer explains all factors before applying any of them, “the reader may quickly lose sight of the factors, what they mean, and which are in your client’s favor”); RAY, *supra* note 8, at 79 (applying each component of a legal test right after explaining it offers the advantage of “keeping the application close to the law, so the reader has the law fresh in his or her mind while reading the application”).

that would follow from selection of a one-sequence (IRRRAAAC) structure because, as discussed in the previous section, the one-sequence structure usually requires the use of headings to separate subissues. For example, imagine a slight change to the facts of the case addressed in the above sample. Suppose Romano's current crime was *not* similar to the past crimes. In this alternative scenario, if the author had separate IRACs with separate headings for similarity and severity, the section on similarity would present a conclusion adverse to the writer's overall conclusion. In objective memo writing, this anomaly could confuse the reader. In persuasive brief writing, an adverse conclusion would be even more detrimental.³⁵ However, the alternating IRAC structure would permit the author to present the adverse conclusion about similarity in the context of the favorable conclusion about severity rather than giving the adverse conclusion undue emphasis by placing it in its own section with its own heading. Because the alternating IRAC structure does not present the same risk as the one-sequence IRAC of overburdening the reader with multiple rule paragraphs at once, headings are not necessarily needed to separate each subissue.

In sum, the alternating structure presents analytical and strategic benefits, especially in a factor-based analysis.

2. *Limitations on Alternating IRAC*

In the sample above, the legal issue involves the analysis of factors that are sufficiently specific and straightforward that they can be illustrated through parentheticals rather than full case-examples. Although the author still synthesizes the law for the reader by reconciling different court pronouncements and outcomes, the analysis does not require a nuanced evaluation of the reasons behind the courts' conclusions or an elaborate proof that the case at hand is comparable to the cases the author uses to support her assessment of the case. The alternating structure works well in this situation because the brevity of each RA

35. CHRISTINE COUGHLIN ET AL., *A LAWYER WRITES: A PRACTICAL GUIDE TO LEGAL ANALYSIS* 323–24 (2013) (advising writers to avoid highlighting an opponent's arguments in persuasive writing but to instead emphasize their weaknesses); *accord* BEAZLEY, *supra* note 8, at 111–15 (discussing how to address how to deal with opposing counsel's arguments); CLARY & LYSAGHT, *supra* note 8, at 201 (last annotation on the page); SHAPO ET AL., *supra* note 8, at 395–96.

sequence lessens the need for separate IRAC sequences with separate headings.

By contrast, when some of the factors or elements require multiple rule paragraphs or multiple application paragraphs, using an alternating IRAC structure may result in an unruly structure like IRRRARARAAAAC. As each RA sequence becomes longer, e.g., RRRRA, the reader becomes less able to change gears to a new factor or element without the aid of a new heading. A one-sequence IRAC (IRRRAAAC) with multiple rule paragraphs would create an expectation on the part of the reader that each point of law will be applied in the application section of the analysis and often in the same order. An alternating IRAC structure, however, does not provide any such cues to the reader. Transitional language at the start of a new factor might not be sufficient to ease a busy legal reader into the next part of the analysis. The one-sequence structure, especially with headings to separate the IRAC sequences, therefore, may be preferable when the factors or elements are more complex.

In addition to requiring relatively straightforward factors, the alternating IRAC structure requires that each factor or element is completely independent of the others. As explained in the earlier section of this Article, when factors or elements have more complicated connections to one another, a one-sequence structure is preferable because it both clarifies connections and avoids repetitive application paragraphs. In the sample alternating IRAC, the first factor (the similarity between past and present crimes) and the second factor (the seriousness of the crimes) do not depend on or relate to one another. Therefore, the author does not need to be concerned about repetitive application paragraphs that would rely on the same facts or arguments.

In sum, writers should consider using the alternating structure only when (1) the analysis involves discrete, separable factors or elements that do not depend on one another or on the same factual considerations; and (2) the factors or elements analyzed are straightforward and do not require lengthy explanation in the rule paragraphs or elaborate proof in the application paragraphs. Even if these two criteria are met, separate IRACs with separate headings for each factor may still be preferable unless (1) the author wants to bring the factors together before moving on to other points; or (2) the author wants to avoid reaching an adverse conclusion under one of the headings.

C. IRAC by Paragraph (IRAIRAIRAC)

A twist on the alternating IRAC structure is to bring each R and A together into a paragraph and add a topic sentence to unite them. The result is an IRAC by paragraph structure in which each paragraph contains an IRA sequence. Because this alternative does not have separate rule paragraphs and application paragraphs, this section of the Article will use the term “rule discussion” in lieu of “rule paragraph.”

Sample IRAC by Paragraph

- I** The similarities between Romano’s prior convictions and his most recent robbery weigh heavily against striking one of the priors. When the nature and circumstances of a defendant’s present felony are identical to his prior felonies, the priors should not be stricken because the defendant has failed to “learn his lesson.” *Compare People v. Williams*, 948 P.2d 429, 438 (Cal. 1998) (affirming the appellate court’s finding that where defendant’s current conviction for driving under the influence mirrored his prior convictions of the same offense, the trial court’s decision to strike the priors was an abuse of discretion), *with People v. Cluff*, 105 Cal. Rptr. 2d 80, 87 (Ct. App. 2001) (stating that the defendant’s present felony of failing to update his sex offender registration did not prove recidivist tendencies toward child molestation and, therefore, did not prevent the striking of a prior). In the instant case, all of Romano’s previous thefts were committed while he was high on meth. Now he has once again committed a theft while high. Romano has not “learned his lesson,” but instead is continuing both his willingness to steal and the addiction that underlies his criminal activity. He is exactly the type of recidivist defendant the three strikes law targets.
- R**
- A**
- I** The seriousness of Romano’s most recent robbery also weighs against leniency. *Compare People v. Burgos*, 12 Cal.

R

Rptr. 3d 566, 572 (Ct. App. 2004) (finding dismissal of a prior was required where two of the defendant's three strikes—using fear to obtain shoes from one fellow detainee and kicking another—were not “the worst of crimes”), with *People v. Myers*, 81 Cal. Rptr. 2d 564, 566 (Ct. App. 1999) (holding that the trial court did not abuse its discretion when it declined to strike priors that involved arson and armed robbery). In general, non-violent crimes are less serious than violent crimes. Compare *People v. Bishop*, 66 Cal. Rptr. 2d 347, 349–50 (Ct. App. 1997) (noting that the defendant's petty theft conviction operated as a mitigating factor), with *People v. McGlothin*, 79 Cal. Rptr. 2d 83, 87 (Ct. App. 1998) (holding that trial court erred in striking a prior when defendant's most recent crime involved a physical attack on two elderly individuals). However, the absence of violence in the commission of a felony does not necessarily warrant saving the defendant from a three strikes sentence. See *People v. Strong*, 104 Cal. Rptr. 2d 490, 501 (Ct. App. 2001) (stating that the intent of the three strikes law is “to ensure longer prison sentences” for defendants who have a qualifying strike and subsequently commit “any felony,” whether violent or not, and finding that the defendant's fraudulent sale of fake illicit drugs fell within the spirit of the three strikes law because it could have led to violence if arguments with the buyers had ensued). Here, Romano did not commit any violence in carrying out the robbery and did not have a weapon. At first blush, his current crime may not seem any more serious than the crimes in *Burgos*. However, Romano sufficiently intimidated the drug store staff to obtain the two bottles of prescription drugs he intended to steal. Moreover, just as the crime in *Strong* could have escalated into violence if one of the potential buyers discovered the defendant's deceit, Romano's robbery could have escalated into violence if one of the staff members or a customer had decided to take action to prevent his theft.

A

C

In light of the recidivist nature of his drug-induced theft crimes and the risk of violence associated with his current crime, Romano remains a danger to society. The

court is unlikely to conclude that he is worthy of a lesser sentence.³⁶

1. *Benefits of IRAC by Paragraph*

IRAC by paragraph is an adaptation of the alternating IRAC structure discussed in the prior section of this Article. It offers the same benefits as that structure—enabling the balancing of factors within a section and avoiding overly long rule sections.

In addition, IRAC by paragraph enables a more forceful and direct style. Whereas the alternating IRAC structure has only an initial thesis about the case at hand for the entire section of a brief or memorandum and then launches into a topic sentence for the first rule paragraph that states a point of law, IRAC by paragraph creates a thesis about the case at hand for each paragraph. An alternating IRAC can seem more academic because the rule paragraphs merely state points of law. By contrast, in the IRAC-by-paragraph structure, the reader is never in doubt regarding the relevance of a particular point of law because the topic sentence of each paragraph states the point about the case that the rule discussion and application in the paragraph will prove. In a field in which readers have little patience for irrelevant information, this benefit should carry considerable weight in the selection of an organizational structure. Because of its forceful and direct style, IRAC by paragraph may be particularly well-suited for persuasive writing, but readers of objective writing can also benefit from its clarity and simplicity.

2. *Limitations of IRAC by Paragraph*

As an adaptation of the alternating IRAC structure, IRAC by paragraph should be used with the same limitations: the analysis should involve discrete, separable factors or elements that do not

36. For more examples of IRAIRAIRAC, see CALLEROS, *supra* note 3, at 261–62; DERNBACH ET AL., *supra* note 13, at 459–61 (sec. I), 467–70; OATES & ENQUIST, *supra* note 12, at 122 (the second RA sequence in section B uses an IRA structure); PARRISH & YOKOYAMA, *supra* note 13, at 159–63; RAMBO & PFLAUM, *supra* note 3, at 575–79, 604–16; SHAPO ET AL., *supra* note 8, at 584–85 (sec. IV); SLOCUM, *supra* note 8, at 592–93 (the last two paragraphs present a counterargument in an IRA structure).

depend on one another or on the same factual considerations, and the factors or elements analyzed should be sufficiently simple to avoid lengthy explanation in the rule discussion or elaborate proof in the application.

IRAC by paragraph does have an additional limitation, however. Because the structure brings rules and application into the same paragraph, it may result in overly long paragraphs in some analyses. The author should consider paragraph length when choosing between alternating IRAC and IRAC by paragraph.

Inserting a new paragraph between the R and the A would not be a good solution. This would be an IR-A-C organization. Since the I provides the point that the R and A will prove, the author would have nothing new to say in a topic sentence for a separate A paragraph. For example, in the sample IRAC by paragraph above, the first IRA paragraph started with the point that the similarities between the defendant's crimes weighs against striking one of his prior convictions. The brief then used case law to establish the relevance of similarities between crimes before making two points in application: the defendant's crimes shared an underlying addiction and all involved theft. With a new paragraph for the application, the analysis would look like this:

Illustration of Problematic IRAC Adaptation

I

The similarities between Romano's prior convictions and his most recent robbery weigh heavily against striking one of the priors. When the nature and circumstances of a defendant's present felony are identical to his prior felonies, the priors should not be stricken because the defendant has failed to "learn his lesson." *Compare People v. Williams*, 948 P.2d 429, 438 (Cal. 1998) (affirming the appellate court's finding that where defendant's current conviction for driving under the influence mirrored his prior convictions of the same offense, the trial court's decision to strike the priors was an abuse of discretion), *with People v. Cluff*, 105 Cal. Rptr. 2d 80, 87 (Ct. App. 2001) (stating that the defendant's present felony of failing to update his sex offender registration did not prove

R

recidivist tendencies toward child molestation and, therefore, did not prevent the striking of a prior).

A

In the instant case, all of Romano's previous thefts were committed while he was high on meth. Now he has once again committed a theft while high. Romano has not "learned his lesson," but instead is continuing both his willingness to steal and the addiction that underlies his criminal activity. He is exactly the type of recidivist defendant the three strikes law targets.

In this problematic structure, the topic sentence at the start of the first paragraph about the defendant's crimes is not proven by the end of the paragraph because only the law is discussed. And the narrow point about the underlying addiction that starts the new paragraph is not a good unifying topic sentence because it does not capture the second point about theft. If we were to add a unifying topic sentence to the second paragraph, it would be the point already stated at the start of the sequence—the similarity in crimes weighs against striking one of his prior convictions. Given the shortness of the analysis in this example, IRAC by paragraph seems preferable. Perhaps in a longer analysis, the repetition of the I at the start of the A paragraph might seem less offensive and, therefore, maybe we could solve the problem by separating the I, R, and A into their own paragraphs—this would be the alternating IRAC structure.

In sum, IRAC by paragraph is a good alternative to alternating IRAC provided that the analysis of each point is sufficiently simple to remain in a single paragraph. It offers greater forcefulness and clarity.

D. The IRAC Sentence

Sometimes an analysis calls for a point so specific and incontrovertible that the entire IRAC sequence on the point can be accomplished in a sentence. The IRAC sentence consists of an assertion about the legal impact of a fact of the case at hand followed by a parenthetical citation that proves the asserted impact.

Sample IRAC Sentence

Because only three women at the police department have ever completed the required exam, Plaintiffs cannot use a statistical analysis to prove the exam had a disparate impact on women. See *Morita v. S. Cal. Permanente Med. Grp.*, 541 F.2d 217, 220 (9th Cir. 1976) (“statistical evidence derived from an extremely small universe . . . has little predictive value and must be disregarded”); *Mayor of Phila. v. Educ. Equal. League*, 415 U.S. 605, 621 (1974) (sample size of thirteen was too small to permit a disparate impact claim).³⁷

1. Benefits of the IRAC Sentence

When appropriate, IRAC sentences can be used to (1) address elements that are not likely to be disputed because they are easily satisfied; (2) address factors that either clearly apply or clearly do not apply to the case; (3) set up a rebuttal to an opponent’s point;³⁸ or (4) provide an extra punch to the introduction, thesis, umbrella, or conclusion paragraphs.³⁹ The IRAC sentences can even serve as an independent mini-RA sequence.⁴⁰ Under the right circumstances, IRAC sentences can efficiently provide the reader with the snapshot needed to resolve an uncontroversial point or to understand a more complex point in the right context.

37. For additional samples of IRAC sentences, see OATES & ENQUIST, *supra* note 12, at 457 (“Such an erroneous denial”); RAMBO & PFLAUM, *supra* note 3, at 610 (“Indeed Walker’s failure . . . mere negligence”).

38. The beginning of section C in the flexible IRAC sample below contains an example. See also MURRAY & DESANCTIS, *supra* note 8, at 405 (“Plaintiffs have two opportunities . . .”), 408 (“Plaintiff may contend . . .”); RAMBO & PFLAUM, *supra* note 3, at 610 (“Indeed Walker’s failure . . . mere negligence”).

39. The last paragraph of section C in the flexible IRAC sample below contains an example. For additional examples, see RAMBO & PFLAUM, *supra* note 3, at 579 (“In reviewing the record . . . Williams . . . at 693”); SHAPO ET AL., *supra* note 8, at 585 (“In actions for libel and slander . . . Altman . . . (1980)”).

40. Section A in the flexible IRAC sample below contains an example of an IRAC sentence as its own RA sequence.

2. *Limitations on the IRAC Sentence*

My observation from the briefs I analyzed is that the IRAC sentence is often overused to the detriment of substantive accuracy, persuasiveness, and clarity. An IRAC sentence is appropriate only when neither the facts nor the point of law require explanation or proof. In the sample above, the record presumably established that only three women took the exam and, therefore, there were no facts to dispute or explain. Moreover, the parentheticals are sufficiently specific to prove the assertion without elaboration. If, for example, the two cited cases had included any limitations or caveats on their pronouncements regarding the impact of a small sample size, then an IRAC sentence would not have worked. The nuances would have required a full case explanation and a more elaborate application of the point of law to the facts of the case at hand. Using an IRAC sentence for a more controversial or nuanced point can severely decrease the effectiveness of the writing by losing the reader's trust and by forfeiting the opportunity to explain the controversy or nuances in a favorable manner.

As an example of a problematic IRAC sentence, consider the following alternative to the sample used in the alternating IRAC and IRAC by paragraph samples:

Defendant should not be saved from one of his convictions because of the seriousness of his present theft. *See People v. Myers*, 81 Cal. Rptr. 2d 564, 566 (Ct. App. 1999) (holding that the trial court did not abuse its discretion when it declined to strike priors that involved arson and armed robbery).

The IRAC sentence does not work well for this point because it oversimplifies both the law and the facts of the case at hand. With respect to the law, we only have an example of arson and armed robbery without any understanding of the other end of the spectrum or the reasoning that led to finding these crimes were serious. Without those details, we do not know what to do with the defendant's theft that involved neither arson nor armed robbery. By contrast, the sample alternating IRAC and IRAC by

paragraph organizations of this analysis explained the role of violence in the assessment of a crime's severity and explained why the absence of violence in the case at hand should not result in a striking of one of the defendant's prior thefts.

In sum, the IRAC sentence has a limited but legitimate place in organizational structure.

E. Narrative Add-Ons: Mixing Facts into the "T" of IRAC

A rigid understanding of IRAC not only misses the above adaptations of IRAC that complex analyses require but also overlooks the common use of narrative details to provide a factual context for the legal points to be discussed.⁴¹ One of the criticisms of IRAC is that it is robotic, even boring.⁴² Adding a narrative element to IRAC by using the facts of the case at hand to introduce and set the stage for each RA sequence can help engage and ultimately persuade the reader.⁴³ This technique can be used in any of the IRAC variations. Moreover, although its persuasive value makes it a particularly important tool in brief writing,⁴⁴ narratives can also avoid the monotony of legal research memoranda by highlighting the significance of the legal issues in the context of the case at hand. The added narratives should be brief to avoid causing the typical results-oriented legal reader to lose patience. The writer should also avoid repetition of the same facts in the application paragraph.

Below is the previous alternating IRAC sample with narratives added in the first thesis paragraph and at the start of each RA sequence.

41. See Kraft, *supra* note 5, at 16–20 (describing and quoting from briefs that included narrative details as part of either an initial umbrella thesis or thesis paragraphs within each subdivision); OATES ET AL., *supra* note 12, at 37; RAMBO & PFLAUM, *supra* note 3, at 610–12 (sec. B(1)); SHAPO ET AL., *supra* note 8, at 621–23 (pt. A).

42. Kenneth D. Chestek, *The Plot Thickens: The Appellate Brief as Story*, 14 LEGAL WRITING 127 (2008).

43. *Id.*

44. *Id.*

Sample IRAC by Paragraph with Added Narratives

Added
Narrative

Defendant Romano has committed three serious theft crimes. He broke into an elderly woman's home and an electronics store and, most recently, he intimidated a pharmacy clerk into giving him prescription drugs. He has shown no regard for the property rights of his victims and very little regard for their physical and emotional well-being. Despite jail time and compulsory counseling for his drug addiction, Romano has continued both his drug habit and the life of crime it has led him to embrace. The trial court's decision to strike one of Romano's prior convictions was an abuse of discretion because Romano's criminal history falls within the spirit of the three strikes scheme.

Added
Narrative

Romano's repeat offenses do not deserve leniency. Romano's prior and current crimes share the same fact pattern: he needs money, he gets high, and then he invades a home or business to steal. In his most recent crime, Romano needed medicine he claimed he could not afford. So, he intentionally became high to give himself the "guts" he said he needed to invade the pharmacy during business hours and demand the medicine. Similarities between multiple felonies reveal that the defendant has failed to "learn his lesson" and therefore should not be spared the three strikes sentence. *Compare People v. Williams*, 948 P.2d 429, 438 (Cal. 1998) (affirming the appellate court's finding that where defendant's current conviction for driving under the influence mirrored his prior convictions of the same offense, the trial court's decision to strike the priors was an abuse of discretion), *with People v. Cluff*, 105 Cal. Rptr. 2d

80, 87 (Ct. App. 2001) (stating that the defendant's present felony of failing to update his sex offender registration did not prove recidivist tendencies toward child molestation and, therefore, did not prevent the striking of a prior). Romano has not "learned his lesson," but instead is continuing both his willingness to steal and the addiction that underlies his criminal activity. He is exactly the type of recidivist the three strikes law targets.

Added
Narrative

The severity of Romano's crimes also weighs heavily against leniency. Although he has yet to harm an occupant, his willingness to invade and intimidate show little regard for the safety of his victims. The pharmacy clerk on duty during Romano's most recent theft suffered nightmares as a result of the incident and was too fearful to return to his job. The severity of a defendant's prior and current felonies should play a large role in a court's decision to strike a prior felony. *Compare People v. Burgos*, 12 Cal. Rptr. 3d 566, 572 (Ct. App. 2004) (finding dismissal of a prior was required where two of the defendant's three strikes—using fear to obtain shoes from one fellow detainee and kicking another—were not "the worst of crimes"), *with People v. Myers*, 81 Cal. Rptr. 2d 564, 566 (Ct. App. 1999) (holding that the trial court did not abuse its discretion when it declined to strike priors that involved arson and armed robbery). In general, non-violent crimes are less serious than violent crimes. *Compare People v. Bishop*, 66 Cal. Rptr. 2d 347, 349–50 (Ct. App. 1997) (noting that the defendant's petty theft conviction operated as a mitigating factor), *with People v. McGlothin*, 79 Cal. Rptr. 2d 83, 87 (Ct. App. 1998) (holding that trial court erred in striking a prior when defendant's most recent crime involved a physical attack on two elderly individuals). However, a crime that poses a potential for violence should be considered a violent crime even if no violence actually ensued. *See People v. Strong*,

104 Cal. Rptr. 2d 490, 501 (Ct. App. 2001) (finding that the defendant's fraudulent sale of fake illicit drugs fell within the spirit of the three strikes law because it could have led to violence if arguments with the buyers had ensued). At first blush, Romano's thefts may not seem any more serious than the crimes in *Burgos*. However, in his most recent crime, Romano sufficiently intimidated the drug store staff to obtain the two bottles of prescription drugs he intended to steal. He was convicted of robbery, a crime that requires at least a threat of force. Moreover, just as the crime in *Strong* could have escalated into violence if one of the potential buyers discovered the defendant's deceit, Romano's robbery could have escalated into violence if one of the staff members or a customer had decided to take action to prevent his theft.

In light of the recidivist nature of his drug-induced theft crimes and the risk of violence associated with his current crime, Romano remains a danger to society. The court is unlikely to conclude that he is worthy of a lesser sentence.⁴⁵

1. *Benefits of Narratives*

The addition of narratives grabs the reader's attention and lessens the risk the reader will skip, dismiss, or misunderstand the author's points. As one scholar has stated, "a brief that relies purely on a logoi-based argument will be lifeless, just as a single strand of the DNA molecule is incomplete. Winding in a solid story-based argument will bring the brief to life."⁴⁶ As another

45. For additional samples of this structure, see *supra* note 40.

46. Kenneth D. Chestek, *Judging by the Numbers: An Empirical Study of the Power of Story*, 7 J. ALWD 8 (2010). Chestek's analysis focused on a broader application of storytelling than the mere addition of narratives to IRAC. However, his study's finding that story-based briefs are more persuasive than those that adhere more closely to IRAC, *id.* at 18–19, supports the narrative additions to IRAC that this Article describes. See also Linda Edwards, *Convergence of Analogical and Dialectic Imagination in Legal Discourse*, 20 LEGAL STUD. F. 13 (1996) (stating, on the importance of narrative in legal analysis, that "[i]f a law-creator sees a legal dispute from a particular narrative perspective, that per-

scholar has explained, narratives provide the “moral value and meaning” of “events” by setting them in the “context of a narrative structure.”⁴⁷ The addition of narrative details to set the context for a point of law is an important step toward acknowledging the significance of narrative reasoning in legal decision-making.⁴⁸

2. *Limitations on Narratives*

As demonstrated in the above sample, narrative introductions to the “RA” sequences fit naturally in an IRAC by paragraph structure as part of the “I” of each sequence. Use of narratives in other structures is more limited. The one-sequence IRAC and alternating IRAC structures do not have a natural home for narratives apart from thesis paragraphs (again, the “I” part of the structure). Narrative details would not fit in a rule paragraph, which is otherwise devoted to a discussion of a point of law. And, of course, narrative details are already in application paragraphs. Therefore, in these other structures, the logical place to add introductory narrative details is in the thesis paragraph as illustrated below.

Sample Alternating IRAC with Added Narrative

N
A
R
R
A
T
I
V
E

Defendant Romano has committed three serious theft crimes. He broke into an elderly woman’s home and an electronics store and, most recently, he intimidated a pharmacy clerk into giving him prescription drugs. He has shown no regard for the property rights of his victims and very little regard for their physical and emotional well-being. Despite jail time and compulsory counseling for his drug addiction, Romano has continued both his drug habit

spective will play its role in law-creation” even if it is not the most accurate narrative).

47. *Id.* at 11.

48. Kraft, *supra* note 5, at 38 n.128 (arguing that the inclusion of narratives should be taught as part of IRAC to enable students to meet the expectations of judges and practitioners that narrative details will play a larger role in legal writing than a strict adherence to IRAC might otherwise encourage).

and the life of crime it has led him to embrace. The court is unlikely to strike one of Romano's prior convictions because

I Romano's criminal history falls within the spirit of the three strikes scheme.

When the nature and circumstances of a defendant's present felony are identical to his prior felonies, the priors

R should not be stricken because the defendant has failed to "learn his lesson" . . .

A In the instant case, all of Romano's previous thefts were committed while he was high on meth. Now he has once again committed a theft while high. Romano has not "learned his lesson," but instead is continuing both his willingness to steal and the addiction that underlies his criminal activity. He is exactly the type of recidivist the three strikes law targets.

R Another consideration is the seriousness of the present felony . . .

A Here, Romano did not commit any violence in carrying out the robbery and did not have a weapon. At first blush, his current crime may not seem any more serious than the crimes in *Burgos*. However, Romano sufficiently intimidated the drug store staff to obtain the two bottles of prescription drugs he intended to steal. Moreover, just as the crime in *Strong* could have escalated into violence if one of the potential buyers discovered the defendant's deceit, Romano's robbery could have escalated into violence if one of the staff members or a customer had decided to take action to prevent his theft.

C In light of the recidivist nature of his drug-induced crimes and the risk of violence associated with his theft current crime, Romano remains a danger to society. The court is unlikely to conclude that he is worthy of a lesser sentence.

In sum, narratives can be included in the thesis paragraphs of any analysis. However, an IRAC by paragraph structure is the best fit for a more pervasive use of narratives.

F. A Flexible IRAC

With an arsenal of possible adaptations of IRAC from which to choose, legal writers can understand IRAC as a flexible concept rather than a rigid model. All of the adaptations discussed above can be combined to escape from the monotony of a universal structure and used for strategic effect provided that the legal writer adheres to the baseline principles of effective organization discussed at the start of this Article.⁴⁹

The sample below illustrates how adaptations of IRAC can be integrated with one another within a single brief or memorandum. It adds narratives to help build sympathy for the legal argument. Consistent with this Article's discussion of the best use of the one-sequence structure,⁵⁰ sections A and B of the sample use this structure for more complex legal issues that require a lengthier and well-synthesized discussion of the law. By contrast, section C of the sample uses the alternating IRAC structure because each point is fairly straightforward and is sufficiently independent that it can be applied without repetition. Finally, the sample uses the IRAC sentence only for very specific points that do not require elaboration either with the details of the cited precedent or with the facts of the case at hand.

49. *See supra* nn.15–19 and accompanying text.

50. *See supra* pg. 243, first full paragraph, and pg. 250, first full paragraph.

 Integrated Sample

II. The Trial Court's Denial of Qualified Immunity Should Be Reversed Because Defendant's Speech Was Protected by the First Amendment.

 I
n
t
r
o
d
u
c
t
i
o
n

The lawsuit against Defendant for expressing his opinions as the leader of his neighborhood association should be dismissed. Defendant's speech was protected by the First Amendment for three reasons. First, it was quintessential political speech that should be afforded the highest level of protection. Second, Plaintiffs' contention that his speech was not protected because he was acting as a city official is contrary to the established right of public officials to engage in public debate. Third, the trial court's conclusion that the commercial speech doctrine permits this lawsuit was erroneous.

A. The First Amendment Protected Defendant's Right to Freely Express His Opinions on How to Improve the Neighborhood Even If His Opinions Were Discriminatory.

 One-Sequence
IRAC

Narrative

At a neighborhood association meeting in the midst of a discussion about the causes of and cures for crime in the neighborhood, Defendant blurted out an ignorant opinion that blacks were to blame. He also advocated some solutions that the Plaintiffs claim were discriminatory. It is not clear whether his proposed solutions were truly discriminatory, but we will assume for the purposes of this brief that they were. Nonetheless, Plaintiffs' theory of the case strikes at the heart of the First Amendment. Defendant's efforts to persuade other members of his neighborhood association to follow his ideas for improving the neighborhood were protected by the First Amendment. The First Amendment does not discriminate between good and bad ideas. All are protected.

I

IRAC
Sentence

Defendant's opinions on crime and safety in his neighborhood, matters of public concern, offered in the course of a public debate must be afforded the highest level of protection. See *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 913 (1982) (stating that "expression on public issues 'has always rested on the highest rung of the hierarchy of First Amendment values' because 'debate on public issues should be uninhibited, robust, and wide-open'"); *Mich. Prot. & Advocacy Serv., Inc.*, 799 F. Supp. 695, 719 (E.D. Mich. 1992) (holding that neighbors' protests against a group home were the "purest form of protected First Amendment activity").

R

Moreover, the First Amendment protects both desirable and undesirable speech. See *Brandenburg v. Ohio*, 395 U.S. 444, 448 (1969) (striking down a statute that prohibited advocating crime and violence); *FCC v. Pacifica Found.*, 438 U.S. 726, 745–46 (1978) ("[I]f it is the speaker's opinion that gives offense, that consequence is a reason for according it constitutional protection" because "it is a central tenet of the First Amendment that the government must remain neutral in the marketplace of ideas").

R

Therefore, even assuming section 1983 and the federal and state housing laws could be construed to ban the expression of discriminatory opinions, the First Amendment would not countenance such content-based regulation of speech. See *White v. Lee*, 227 F.3d 1214 (9th Cir. 2000). In *White*, . . . [full discussion omitted here]. The court concluded that "a speaker's advocacy of his views, however 'ill-advised, uninformed, and even distasteful,'" can amount to a violation of the Fair Housing Act only if the *Brandenburg* standard is met. *Id.* at 1230.

A
C

Under the above precedent, the Defendant was free to participate in his neighborhood association, to express his views at the meetings, and to advocate for his desired policies in the newsletters he prepared as chair of the association. He cannot now be punished under the Fair Housing Act or any other law for such political speech merely because his views were offensive or discriminatory.

One-Sequence
IRAC

B. Defendant Did Not Lose His First Amendment Right Merely Because the City Was Involved in the Neighborhood Association. Government Officials Have a First Amendment Right to Debate Public Policy.

I The trial court’s ruling that Defendant had no First Amendment right because he was a government agent was erroneous.

R The right of government officials to express their opinions on matters of public importance is fundamental and has been accorded the highest level of First Amendment protection. *See Bond v. Floyd*, 385 U.S. 116, 132-33 (1966). In *Bond*, . . . [full discussion omitted here].

R That government agents retain their First Amendment right is also clear from case law that restricts the government’s ability, as an employer, to punish its employees for speaking on matters of public concern. *See Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968) (finding that the idea that a public employee relinquishes the First Amendment right to comment on matters of public interest “has been unequivocally rejected”).

A Defendant’s alleged comments at the neighborhood association meeting were an expression of opinion in the course of debating how to improve the neighborhood. Defendant did not command, “You must stop renting to blacks.” Rather, he argued, “If we don’t rent to blacks, we don’t have the problem.” (1 R. at 99). He was attempting to convince the other members of the association of his opinion, and his words are not reasonably susceptible to any other interpretation. Defendant’s mailings espousing the policies that plaintiffs claim were discriminatory (1 R. at 4–6) were similarly persuasive in nature. For example, he writes, “If you have any kids under 18, you should tell them about the curfew . . . There are kids that are not in school, and the parents don’t seem to care. We must correct this problem for the kids['] sake.” (1 R. at 110). Similarly, in other instances, he used words that suggest argumentation and per-

suation rather than a directive, including “propose” (1 R. at 115), “desire” (*id.*), and “recommend” (1 R. at 120). As held in the above precedent, Defendant did not lose his right to advocate for solutions to the crime and sanitation issues facing his neighborhood merely because he held a leadership role in the association.

C

IRAC by
Paragraph

C. Defendant’s Speech Cannot Be Regulated as Commercial Speech Because His Statements Were Not Connected to a Commercial Transaction.

I

Narrative

The trial court’s alternative ruling that Defendant’s speech was properly regulated as commercial was also erroneous. The trial court found Defendant’s speech was commercial because he “made the[]statements as the owner of investment or income-producing properties to other such owners in a meeting of an association that was founded to advance the owners’ interests as owners.” (2 ER at 300). An economic motive, however, is “clearly insufficient” to establish speech as commercial. *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 67 (1983).

IRAC
Sentence

I

R

A

Defendant’s speech does not fall within the core definition of commercial speech. To fall within the core definition, the speech must have the sole purpose of proposing a transaction. *Id.* at 66–67. Defendant’s speech was not made to prospective tenants but, rather, was made to other landlords with whom he had no interest in transacting. Further, neither Defendant’s comments at the October 1998 meeting or the mailings related to a specific commercial transaction. Instead, the comments and mailings were made in the course of a debate on how to improve the neighborhood. They do not, therefore, fit within the core definition of commercial speech.

I

R

Nor do any other factors bring his speech within the commercial speech doctrine. Where speech does not fit the core definition of commercial speech, economic motivation *together with other factors*, including whether the speech is in the form of an advertisement and whether it references a specific product, can nonetheless characterize it as

A commercial. *Id.* at 66–67. However, neither of these other factors applies to Defendant’s speech. Defendant was not advertising his property and did not make any representations about it. There is, therefore, no support for the trial court’s conclusion that his right to free speech was diminished because his speech was commercial.

I
R The trial court’s reliance on *Harris v. Itzhaki*, 183 F.3d 1043 (9th Cir. 1999) was misplaced. True, *Harris* did allow a Fair Housing Act claim based on the comments of a property manager. *Id.* at 1054. However, the Defendants in *Harris* did not raise a First Amendment privilege. Their speech was clearly commercial. In *Harris*, the property manager’s statement that the apartment owners “don’t want to rent to blacks” was made in the context of a conversation between the manager and the groundskeeper regarding a particular vacancy in the building. *Id.* at 1048.

A Because Defendant’s comments were not made in connection with a particular vacancy, *Harris* is inapplicable.

IRAC
Sentence

Conclusion

The manner in which Plaintiffs seek to invoke the Fair Housing Act directly violates the bedrock principle that all citizens have a right to engage in public debate on political questions. *See Bond*, 385 U.S. at 135–36 (government agents must be given the “widest latitude” to express their views). The trial court’s order should be reversed.⁵¹

III. SOME NOTES FOR LEGAL WRITING TEACHERS

Legal writing professors who want to encourage creativity and self-reliance in their students are often reluctant to offer a one-size-fits-all paradigm or even a sample brief or memorandum out of fear that students will slavishly copy aspects of the

51. For more samples of integrated briefs, see CLARY & LYSAGHT, *supra* note 8, at 200–05; OATES & ENQUIST, *supra* note 12, at 121–25, 498–07; PARRISH & YOKOYAMA, *supra* note 13, at 152–56 (primarily using an IRAC by paragraph structure but with some IRAC sentences and a narrative included); RAMBO & PFLAUM, *supra* note 3, at 604–16 (primarily using an IRAC by paragraph structure but with some IRAC sentences and narratives included); SHAPO ET AL., *supra* note 8, at 580–85; SLOCUM, *supra* note 8, at 590–93.

paradigm or sample that do not make sense in a particular situation.⁵² Yet other scholars have concluded that paradigms and samples offer significant benefits to novice writers.⁵³ By presenting students with a variety of models and corresponding samples and some guidance about how to select between them, legal writing professors can achieve a good balance between providing novice legal writers with the help they need while encouraging creativity and self-reliance.⁵⁴

With adequate instruction, upper-level students who have already taken a legal writing course can likely absorb the organizational choices as adaptations of the IRAC paradigm. However, presenting all of the structural choices at once is likely to be overwhelming to first-year law students. For first-year students, the one-sequence IRAC is a good structure with which to start because it helps students understand the different functions of rule explanation and application. It also encourages rule synthesis because students can more easily see the need for transitions between each rule paragraph when the rule paragraphs are kept together. Ideally, each new structure can be introduced in conjunction with an assignment that helps teach its costs and benefits. For example, a legal writing course that requires two legal research memoranda in the fall and a draft brief and final brief in the spring could gradually introduce the structures as follows. Students could be taught to use the one-sequence IRAC in the first assignment after they understand the basic IRAC paradigm. Then, the second assignment could involve a factor-balancing analysis that would be a good match for

52. Toni M. Fine, *Comments on IRAC*, 10 Second Draft, Nov. 1995, at 7, 7–8 (proposing that educators should help students through the process of developing their own framework for analysis); Jane Kent Gionfriddo, *Dangerous! Our Focus Should Be Analysis, Not Formulas like IRAC*, 10 SECOND DRAFT, Nov. 1995, at 2 (proposing a focus away from paradigms and toward “demystifying [the] inherently challenging process of legal analysis and its communication”); Venter, *supra* note 5, at 624–26 (arguing that paradigms are too limited to allow analytical skills to develop; faculty need to focus more on creative thinking skills including consideration of audience, context, constraints, and the interests of the parties); Vorenberg & McCabe, *supra* note 5, at 17; Warren, *supra* note 5, at 19 (stating that IRAC erroneously requires students “to mold printed facts into [a] form-fitted legal construct” rather than to think about what is really going on in the case).

53. Turner, *supra* note 1, at 351–52 n.2; see also Judith B. Tracy, *I See and I Remember; I Do and Understand: Teaching Fundamental Structure in Legal Writing Through the Use of Samples*, 21 *TOURO L. REV.* 297, 308 n.25 (2005) (listing numerous published Articles that have discussed the importance of samples to student learning in writing courses).

54. Tracy, *supra* note 53, at 309–13 (advocating for the use of a variety of samples to teach students about structure while emphasizing the need for flexibility).

the introduction of the alternating structure. Students could then have the option of choosing between the one-sequence and alternating IRAC structures for that assignment. As students prepare their draft briefs in the spring, they could be introduced to IRAC by paragraph. Then, they could be encouraged to incorporate narratives into their final briefs. IRAC sentences can also be taught either as an advanced technique or when an appropriate use arises in the hypotheticals on which students are working.

In addition to taking an incremental approach to the organizational options, professors should provide students with a decision tree, checklist, or other decision-making tool that will help them select the right structure for their particular goals. For example,

For each section of your brief or memorandum, consider which variation of IRAC best fits the analysis.

The one-sequence structure (IRRRAAAC) is best when the section:

- explains the evolution of the law on a particular issue (e.g., from an original rule to an exception to limitations on the exception),
- involves a complex issue with many interconnected considerations, or
- would result in repetition in one of the other structures because the applications would involve the same facts.

The alternating IRAC structure (IRARARAC) or the IRAC by paragraph (IRAIRAIRAC) structures:

- work well if your analysis involves balancing factors because they enable you to weigh the factors more easily and
- may be particularly beneficial if
 - some of the factors suggesting conflicting results in your client's case or
 - if you are writing a brief and want to deemphasize the factors that weigh against your client.

When choosing between the alternating IRAC structure and the IRAC by paragraph structure, consider paragraph length:

- IRAC by paragraph can sometimes lead to overly long paragraphs while the alternating structure can sometimes lead to overly short paragraphs.
- Your choice should therefore depend on the complexity of your rule discussions.⁵⁵

⁵⁵. A modified version of this checklist and incremental student-oriented instruction on the IRAC variations are available in TURNER, *supra* note 7, at 108–50.

IV. CONCLUSION

Many legal writing professors teach specific structures because they are helpful for novice legal writers.⁵⁶ The one-sequence structure, for example, reminds legal writers that they need to synthesize the law for the reader and arms them with the power of the syllogism. However, a seasoned lawyer knows that the practice of law requires flexibility because the universe of legal issues and fact patterns is expansive and diverse. This Article attempts to bridge the gap between the typical first-year legal writing course taught in law school and the flexibility that practice demands by describing some modifications of IRAC that can produce more strategic and engaging writing. I have often heard my students complain that what we teach does not seem to be the way that lawyers write. In the past, I have responded that I want them to be *great* legal writers rather than *average* legal writers. Many lawyers may write entire briefs consisting solely of IRAC sentences just as many airline pilots may be texting while computers fly their planes. The existence of the practice does not make it a good idea. However, after seeing the modifications of IRAC described in this Article at work in numerous samples in legal writing textbooks and in briefs, I am convinced that they can lead to better writing.

I have been introducing the modifications to my students for the past two years using the incremental approach described above. I spend a little class time on the alternating IRAC structure when I introduce it in the second half of the fall semester. I do not tend to spend class time on the more advanced structures but, instead, assign reading on those structures from my textbook. A significant number of students have used the alternating IRAC structure effectively. A smaller number have used narratives and IRAC by paragraph but with great success. The faculty advisor of our moot court team has told me that the IRAC modifications are helpful to transitioning students from the first-year course to moot court brief writing: rigidly IRAC-ed briefs do not tend to win competitions. Finally, I feel personally satisfied that I am not teaching only one rigid form of IRAC but am at least exposing students to the flexibility of IRAC and the need to vary structure to fit their circumstances.

56. See Turner, *supra* note 1, at 351–52 n.2.