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DO REAL LAWYERS USE CREAC?



BY DIANE KRAFT

If you ask a law student to explain how legal analysis is organized, the chances are good the student will respond with something like IRAC (Issue, Rule, Analysis, Conclusion) or CREAC (Conclusion, Rule, Explanation of the rule, Application of the rule, and Conclusion). That's because most legal writing textbooks teach paradigms like IRAC and CREAC as the correct way to organize legal analysis.

A few years ago, one of my students asked me if practicing attorneys also used CREAC,¹ or if the paradigm was intended just for law students learning to write. In effect, the student was asking if CREAC was like a set of training wheels that would be discarded once the writer became proficient. My answer was that practicing attorneys continue to organize analysis by CREAC—although they may do so unconsciously—because that's what legal analysis usually is: applying a rule to a set of facts to reach a conclusion.

But was I right? Would an examination of briefs written on the kinds of issues law students often analyze in legal writing classes support my assertion that practicing attorneys still use CREAC? The answer is yes. Experienced lawyers do indeed use CREAC to organize legal analyses.²

This shouldn't be a surprise. An argument organized by IRAC or CREAC is essentially using deductive reasoning, or a syllogism, which is central to legal analysis.³

Here's an illustration using a well-known syllogism:

"All humans are mortal" is the R (rule);⁴ "Socrates is a human" is the A (application of rule to facts); and "Therefore, Socrates is mortal" is the C (conclusion).⁵

Organization paradigms like CREAC are "designed...to teach students to reason as syllogistically as possible."⁶ This doesn't mean that all legal arguments should adhere slavishly to CREAC, however. In the briefs I examined, which analyzed two factor-based issues,⁷ the writers often used variations of CREAC in organizing their arguments. They followed CREAC by stating rules first, which were usually followed by rule explanation and rule application. When the writers deviated from strict adherence to CREAC, it was often to include facts about the case at bar in places other than rule application—often before the rule or between the rule and rule explanation—and to intersperse rule explanation with rule application.⁸ This was perhaps to avoid "formulaic writing devoid of the personal stories that form the conflict being presented to the court."⁹ Indeed, legal writing scholars recognize the importance of narrative in legal analysis, and stress that "[l]aw lives on narrative"¹⁰ and "lawyers persuade by telling stories."¹¹ Emphasizing the facts by including them in places other than rule application can be an effective persuasive technique, as long as it doesn't confuse a reader who is expecting the analysis to follow CREAC.

Moreover, CREAC isn't the only way an argument can be organized, and sometimes isn't the best way. Wilson Huhn has identified five types of legal reasoning—textual analysis, intent, precedent, tradition, and policy—not all of which are strictly rule-based.¹² In other words, while the deductive reasoning that CREAC represents is crucial to legal analysis, "multiple legitimate forms of legal arguments exist."¹³ Therefore, effective legal analysis must sometimes be organized in a ways quite different from CREAC.

When I explain CREAC to new law students, I tell them not to think of it as training wheels, or as the only way to organize legal analysis. Instead, I tell them to think of it as a basic white sauce, a sauce that every beginning cook needs to master. As the cook gains experience, she'll continue to use this basic sauce regularly, but will know when to add a few ingredients to better complement a particular dish, or when to use a different sauce completely.¹⁴ In the same way, experienced practicing attorneys recognize that sometimes it's appropriate to deviate from CREAC or to use a different organizational paradigm altogether. But when an effective legal argument calls for deductive reasoning, real attorneys use CREAC.

ABOUT THE AUTHOR

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ENDNOTES

1. At the time, I used *Legal Writing* by Richard K. Neumann, Jr. and Sheila Simon (2d ed. 2011) as the main textbook in my legal writing classes. This text teaches CREAC as "the paradigm for structuring proof of a conclusion of law." *Id.* at 119.
2. Diane B. Kraft, CREAC in the Real World, 63 *Cleveland State L. Rev.* 567 (2015).
3. Reasoning by syllogism is widely regarded as a highly effective way to win an argument because if the judge agrees with the major premise (the rule) and the minor premise (the application of the rule to the facts) the conclusion is inevitable. Legal scholar James A. Gardner argues that "all legal argument should be in the form of syllogisms." James A. Gardner, *Legal Argument: The Structure and Language of Effective Advocacy* 6-7 (1993).
4. The E of CREAC—rule Explanation—is sometimes considered a part of R, and so is not represented as its own component in the syllogism.
5. Anita Schnee, Logical Reasoning "Obviously", 3 *J. Legal Writing Inst.* 105, 107 (1997).
6. Kristen K. Robbins Tiscione, A Call to Combine Rhetorical Theory and Practice in the Legal Writing Classroom, 50 *Washburn L.J.* 319, 329 (2011).
7. One issue was whether the defendant had been in custody for *Miranda* purposes; the other issue was whether a defendant had a reasonable expectation of privacy for Fourth Amendment search and seizure purposes.
8. Kraft, *supra* note 2, at 14-31.
9. Kenneth D. Chestek, The Plot Thickens: The Appellate Brief as Story, 14 *J. Legal Writing Inst.* 127, 132 (2008).
10. Anthony G. Amsterdam & Jerome Bruner, *Minding the Law* 110 (2000).
11. Christopher J. Rideout, Storytelling, Narrative Rationality, and Legal Persuasion, 14 *J. Legal Writing Inst.* 53, 54 (2008).
12. Wilson Huhn, *The Five Types of Legal Argument* (3d ed. 2014).
13. Wilson Huhn, Teaching Legal Analysis Using a Pluralistic Model of Law, 36 *Gonz. L. Rev.* 433, 440, 481-82 (2000-2001).
14. Kraft, *supra* note 2, at 593.