

# **Fourth Annual Festival of Legal Learning**

Regent University School of Law  
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## **Session 1**

# **Writing With a Judicial Perspective in Mind: Building a Persuasive Brief**

**The Honorable David W. Lannetti**  
Chief Judge, Norfolk Circuit Court

**Janis L. Kirkland, J.D.**  
Director, Regent University School of Law Legal  
Analysis, Research, and Writing Program

**Program Description:** This presentation focuses on how to develop more persuasive briefs by focusing on providing analysis that will help the judge to understand the law and how it should apply to the current case. Specifically, the program focuses on presenting the analysis in a manner that will be organized and drafted in a way that will help the judge use the brief as the basis for an opinion. Participants are coached to use rule-based reasoning that articulates each governing rule principle, illustrates how it has been used in the past, and then explains how when the rule is applied to the current situation, the outcome should favor the client. The presentation also will offer other miscellaneous tips to improve briefs.

### **Target Audience:**

The CLE is directed at lawyers and judges who are interested in developing more effective briefs or other written legal analysis.

### **Course Objectives:**

1. Understand importance of rule-based reasoning
2. Understand key components of high-quality rule-based reasoning, including purposes, attributes, and tips for promoting good writing
3. Develop a writing process likely to develop a highly effective brief

## Brief Outline:

- I. Organize Well – Use IRA<sub>1</sub>A<sub>2</sub>C organization (often taught in law school as IRAC) to promote strong rule-based reasoning.
- II. Focus on each IRA<sub>1</sub>A<sub>2</sub>C segment
  - Issue (I)
    - Purpose – makes sure reader understands topic of analysis
    - Key attributes – typically identified in argumentative point heading
    - Tips to promote effectiveness – slant
  - Rule (R)
    - Purpose – explain governing rule clearly
    - Key attributes – generally applicable, explains rule thoroughly, avoids overuse of quotations, supported with citation to legal authority
    - Tips to promote effectiveness – focus on techniques to promote clarify and rely on most authoritative law available
  - Analogous Case Descriptions (A<sub>1</sub>)
    - Purpose – Illustrate past uses of the rule
    - Key attributes – Identify case outcome re issue being analyzed, case facts relevant to issue, and court’s reasoning so reader can understand how court applied rule in situation presented by case; strive for two contrasting situations to help reader understand limits of rule
    - Tips to promote effectiveness – rely on mandatory cases when possible; maintain disciplined focus on current topic of analysis,
  - Rule Application to Current Situation (A<sub>2</sub>)
    - Purpose – Demonstrate how law favors client when rule is applied to current situation
    - Key attributes – use of plain language argument, analogous reasoning, or policy argument
    - Tips to promote effectiveness – use specific facts, complete and precise analogies, and use authority to offer legal support for arguments
  - Conclusion (C)
    - Purpose – Demonstrate that you’ve showed issue should be decided in client’s favor
    - Support with rule principles
- III. Other Miscellaneous Tips to Promote Effective Brief Arguments
  - Focus on accuracy
  - Make it easy for the judge to use your brief
  - Focus on clarity
  - Invest time into high-quality editorial work, focusing on *all* parts of the brief, maximizing clarity and quality of writing
  - Cite where needed with correct format
  - Proofread carefully
  - Verify compliance with local rules

# How to Develop a Strong, Well-Reasoned Argument

## Organize Well

- A. Begin with an umbrella opening paragraph that supplies your overall theory about **why the client wins** *and* **identifies individual points that are important for the court to decide**.
- B. Then, **analyze only one disputed issue at a time**, using **rule-based reasoning** to analyze each disputed issue.
- C. **IRAC (or IRA<sub>1</sub>A<sub>2</sub>C, as will be explained below) is not just for law school exams!** This organizational paradigm can help your client by offering an organized, compelling presentation of the argument.

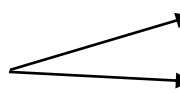
Think back – way back – to your 1L year: Do you remember IRAC?

- I = Issue
- R = Rule
- A = Application of Rule
- C = Conclusion

Use of the IRAC paradigm ensures that your argument is based on *rule*-based reasoning. Although this paradigm or something similar may have been used for law school exams or the bar exam, it also should be used for the argument in your briefs. Why? Because judges must apply the law, as reflected in precedent, and IRAC tracks the decision-making process they must use. Use of IRAC analysis makes it easier for the judge to rule in your favor because it clarifies how the law supports your client's position.

- D. How is precedent used in the IRAC/IRA<sub>1</sub>A<sub>2</sub>C paradigm? Precedent is used primarily in two portions of the analysis:
  - 1) **Rule** – All rule material should be based on legal authority, most commonly a constitution, a statute, or caselaw.
  - 2) **Application of Rule** – Although, in rare cases, application may be so straightforward that you can simply apply the word to the current situation, usually caselaw support is warranted to strengthen your client's position.
    - a) Analogous (or distinguishing) cases should be used to illustrate how the rule has been applied in the past.
    - b) Application of the rule to the current situation can then follow, using both straightforward application of the key rule principle *and* analogous reasoning, showing how key facts of the current situation are similar to facts of cases with a favorable outcome and are different, or distinguishable, from any essential cases that may have resulted in an unfavorable outcome.

Thus, IRAC becomes IRA<sub>1</sub>A<sub>2</sub>C.

- **I** (Issue)
  - **R** (Rule)
  - **A** (Application of Rule)
  - **C** (Conclusion)
- **I** (Issue)
  - **R** (Rule)
  - **A**<sub>1</sub> (Application of Rule in Past Cases)
  - **A**<sub>2</sub> (Application of Rule to Current Case, primarily via Plain Language & Analogous Reasoning)
  - **C** (Conclusion)
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Example of Large-Scale Organization Using IRA<sub>1</sub>A<sub>2</sub>C (Umbrella paragraph identifying distinct requirements, followed by IRA<sub>1</sub>A<sub>2</sub>C analysis of each individual requirement)

Although a written contract might normally be required for the sale of goods over \$500, Quality Custom Carpets can enforce its oral contract to manufacture a series of rugs to Sam Smith because the contract involves “specially manufactured goods” under Colorado Revised Statutes section 4-2-201(3)(a) (2022). Specifically, (1) these carpets were “specially manufactured,” (2) they are not suitable for sale in the ordinary course of business, (3) manufacture began before Mr. Smith attempted to cancel the agreement, and (4) repeated use of the Smith family crest woven into the carpets shows that these genuinely were made only for Mr. Smith.

Umbrella Paragraph

- A. **Specially Manufactured** – Analyze using IRA<sub>1</sub>A<sub>2</sub>C
- B. **Not Suitable for Sale in Ordinary Course of Business** – Analyze using IRA<sub>1</sub>A<sub>2</sub>C
- C. **Manufacture Began Before Buyer Attempted to Cancel Contract** – Analyze using IRA<sub>1</sub>A<sub>2</sub>C
- D. **Clear Indication that Rugs Were Intended for Smith** – Analyze using IRA<sub>1</sub>A<sub>2</sub>C

Maximize your Argument’s effectiveness by making sure each IRA<sub>1</sub>A<sub>2</sub>C segment does its job, making it easiest for the judge to see how the law supports your client.

## **Focus on Each IRA<sub>1</sub>A<sub>2</sub>C Segment**

Each IRA<sub>1</sub>A<sub>2</sub>C segment has an important role. Thus, to maximize persuasion, make sure each portion of analysis contains important attributes so it can contribute to your client’s argument as much as possible.

### **Issue (I)**

Purpose for the Issue – Clarify the topic for the segment; make sure the judge understands which topic/requirement is being addressed.

#### Key Attributes of the Issue

- 1) **Present the Issue in an argumentative point heading.** Often it is helpful to begin each distinct topic of analysis (i.e., each IRA<sub>1</sub>A<sub>2</sub>C segment) with an argumentative point heading.
  - Use a complete sentence for each argumentative point heading, and state it in a way that is persuasive and favors your client.
  - Reword the same idea to begin the text, because
    - Sometimes readers skim all point headings before reading text (thus, the point headings, standing alone, need to supply a short, persuasive reason *why* the court should rule in your client’s favor);
    - Some readers will skip the point headings, so the opening statement for the analytical passage also needs to begin the narrative text for the analytical segment (IRA<sub>1</sub>A<sub>2</sub>C); and
    - Some readers will read both the point heading and the text (thus, although the opening sentence of the analysis should express the same idea as the point heading, it should not simply repeat the same wording verbatim).
- 2) **“Slant” the issue.** In a brief, each topic of analysis (i.e., the “I” portion of each IRA<sub>1</sub>A<sub>2</sub>C) typically should be presented as a conclusion, identifying what the segment of analysis will demonstrate.

### **Rule (R)**

Purpose for the Rule Paragraph – Identify and explain legal principles governing your client’s outcome on the specific topic being analyzed in the current IRA<sub>1</sub>A<sub>2</sub>C passage.

#### Key Attributes of the Rule

- 1) **Generally applicable** – At this point, your task is to *educate* the judge about the governing rule. Thus, the rule should be generally applicable, meaning it is about *all* similarly-situated individuals, not about either your client or the litigants in a particular case.

Thus, in the carpet example above, the rule for “specially manufactured” should explain generally what attributes are needed for a seller’s product to be classified as

“specially manufactured” rather than whether the particular rugs prepared by Quality Custom Carpet for Smith were specially manufactured or why a product in any particular case was specially manufactured.

- 2) **Explains rule well** – The rule paragraph should move past simply identifying a key concept to explain all concepts essential for this topic as clearly as possible, identifying both the **legal standard** and important **types of facts**.
- 3) **Maintain professional integrity while striving for persuasion.**
  - Remember your professional responsibility to present the rule accurately, even if it is not particularly favorable to your client.
  - But strive for persuasion. For example,
    - If the opposition has the burden of proof, emphasize that burden by noting that the opposition cannot prevail unless it proves each and every requirement. If the burden is a high one, highlight the high standard as well.
    - If your client has the burden of proof, treat the burden as an opportunity, noting that *any time* the requirements are satisfied, the court *must* make the favorable ruling your client seeks.
- 4) **Support every rule statement with citation to legal authority!** Thus, every sentence of the rule paragraph should be followed by a citation.

#### Legal Authority for the Rule

**Be sure to rely on authoritative sources.** Remember that judges must apply precedent. Also, recall the distinction between *mandatory* and *persuasive authority*:

- A judge must apply mandatory authority when available. Mandatory authorities are primary authorities that govern within the jurisdiction (i.e., constitutions, statutes, ordinances from within the jurisdiction, or binding caselaw from courts of the jurisdiction). Recall that as you no doubt learned during your 1L year, secondary sources (e.g., law review articles, treatises) are *not* primary authority and, thus, not mandatory authority.
- Also, remember the weight of authority, which is ranked as follows:
  - 1) Enacted law for the jurisdiction, such as
    - Constitutions
    - Statutes
    - Ordinances
  - 2) Caselaw from courts of the jurisdiction (higher court cases being more authoritative than lower court cases)
- **Thus, the rule portion of your analysis always should be based on mandatory authority**, unless the case presents a matter of first impression (meaning that the jurisdiction has not yet ruled on the issue). If your case involves a matter of first impression,

- 1) Begin by explaining what governing authority exists and why governing authority doesn't fully address the current situation.
- 2) Then, educate the judge by explaining the rules used in other jurisdictions. If there's a split of authority (i.e., other jurisdictions use a variety of different rules), identify which rule this court should adopt and offer policy-based support regarding why the court should adopt the rule you request. (Of course, try to convince the judge to adopt a rule that is favorable for the client.)

## **Analogous Case Descriptions (A<sub>1</sub>)**

Purpose of the Analogous Case Descriptions – Illustrate how the rule has been used in the past. In law school, your 1L writing professor may have labeled this segment of analysis as “rule explanation” or “rule proof.” Regardless of the label, the purpose for this segment of analysis is to help the reader understand how the rule concepts mentioned in the preceding rule paragraph have been used previously in specific situations. In a law school exam, analysis usually is based on plain-language application of rule principles to the facts of the current case, but in a brief a judge will expect to see how other courts have applied the rule before considering how to apply the rule to the current situation.

### Key Attributes of the Analogous Case Descriptions

- For each case description,
  - o Make sure the reader knows (from the start), what case you're describing and the outcome of that case regarding the issue being analyzed.
 

Thus, for the carpet example, when analyzing whether the rugs were “specially manufactured,” tell the reader whether the product in the case being illustrated was ruled to be specially manufactured (*not* simply the overall holding about whether the contract in the case was enforceable, which also might involve one of the other required elements).
  - o Identify key case facts, but don't distract or confuse the reader by attempting to relay the entire case story.
 

Thus, for the carpet example, supply case facts related to the analysis of whether the product was specially manufactured, but *omit* superfluous facts regarding things like dates, names, and procedural history.

Insertion of irrelevant details harms your description by forcing the reader to stop and figure out why such details are important; after learning that many details are in fact irrelevant, the reader may lose confidence in *your* ability to understand why your client should win the current case.
  - o Identify the reasoning used by the court to reach its decision about the issue, so the reader can understand how the court actually used the *rule*.
  - o Write with discipline, avoiding the temptation to provide expansive case stories and explanations. Instead, edit rigorously so your description is very lean, focusing the reader quickly on how the court applied the rule to key facts to reach

its decision about the topic currently being analyzed. Avoid discussion of other issues that may arise in the same case.

- Note that, in contrast to the rule segment of analysis, which needs to be generally applicable, a case description is *specific* because the focus is entirely on how the rule was used in the specific factual situation presented in that individual case.

### Case Selection

- Offer only a few case descriptions, aimed at providing the best possible picture of how the rule has been applied, ideally, from your client's viewpoint. Never offer another case description simply to indicate that another one is available. Instead, make sure that each case description provides a specific source of support to your client's position.
- **If there's a mandatory case that is fully on-point, you *must* include it.** (If the case is unfavorable, try to present the case as a very narrow holding based only on those specific facts; then, when the rule is applied in the next analytical segment (A<sub>2</sub>), try to distinguish the unfavorable case, showing why it should not govern the outcome for your client.)
- Rely on mandatory cases to the extent possible. If necessary, you might consider use of a persuasive case from a high-level authority in a different jurisdiction, provided the case is very closely on point factually.
- Often, you can educate the reader most fully by illustrating both possible outcomes based on the rule. Thus, rather than ignoring key cases used (or likely to be used) in the opponent's brief, include at least a sample of these cases, again, presenting those cases as narrow holdings and plan to distinguish those unfavorable cases later as you apply the rule to your client.
- Also, when choosing which cases to illustrate, think about what favorable factual comparisons you can make to the current situation:
  - o What legally-significant factual details in a favorable cases are similar to facts of the current situation?
  - o For cases with an unfavorable outcome, what legally significant case facts can you envision distinguishing from the current situation?

The ability to identify clear similarities with facts of a favorable case and/or clear distinguishing attributes from unfavorable cases can make a case helpful when explaining how the rule should be applied in a manner that is favorable to your client. When writing the case description, be sure to include the factual details you can envision using later to create analogies.

Be sure to describe all cases you plan to use as support *before* moving ahead to the next segment of analysis (A<sub>2</sub>) and explaining how the rule should apply to the current situation. Occasionally, a lawyer will want to ping-pong back and forth between case descriptions and rule application. This approach, however, distracts from the goal of rule-based reasoning, allowing the judge only to see how a few isolated cases compare to the current situation. The goal is to demonstrate how the **rule** (not merely isolated cases) can be applied in a manner that is favorable to your client. Although analogies are important (and will be used later, as explained in the rule application section below when describing A<sub>2</sub>), the analogies are simply a tool to help the court understand how the *rule* should apply.



## Rule Application (A<sub>2</sub>)

Now that you've done the best possible job of helping the judge understand the law (i.e., the governing rule and how that rule has been applied in the past), it is time to demonstrate how the rule should be applied to the current case in a manner that will lead to the desired result for your client. The following list identifies some of the most commonly used and effective forms of argument:

- Plain language application of the rule principles,
- Analogous reasoning, and
- Policy-based arguments.

Plain Language – Be sure to apply specific factual details of the current situation, demonstrating how the rule should be applied to the current situation in a favorable manner. Avoid superficial generalizations.

Analogous Reasoning – Add legal support to the argument by demonstrating how the current situation is similar factually to cases with a favorable outcome. Also, explain why cases with an unfavorable outcome can be distinguished factually, justifying a different outcome for your situation.

Use the following tips to form effective analogies:

- **Be sure to include all three required components that form a proper analogy:**
  - 1) Factual details of the current situation,
  - 2) Case factual details, and
  - 3) Comparison with legal significance based upon the rule principles.
- **Make precise comparisons.**

Thus, for the carpet example, compare attributes of the rugs that Quality Custom Carpet has made for Mr. Smith with attributes of a specially manufactured product that was ruled to be “specially manufactured” in one of the cases illustrated in A<sub>1</sub>.

- o Avoid vague claims that the current situation is “like” or “unlike” a case name.
  - o Also, be sure to compare *factual details* rather than merely claiming that the same case outcome is warranted as in a favorable case, or that the outcome should differ from that in an unfavorable case.
- **Focus on similarities with cases that have a favorable outcome and distinctions from cases that have an unfavorable outcome.**

Policy Arguments – When researching some legal issues, you'll notice that courts sometimes provide significant discussion of policy concerns. When addressing this type of situation, feel free to include policy arguments about how important policies can be advanced by your client's desired outcome. Remember, however, that courts apply precedent. Thus, when providing a policy argument, be sure to use precedent, citing cases in which the policies have been discussed,

rather than offering only your personal opinion about how your client’s desired outcome can advance a particular policy.

## **Conclusion (C)**

Finally, end each segment of analysis by reminding the reader what issue you’ve been focused on and how you’ve now demonstrated that the desired outcome is warranted based upon the law. Don’t rehash the entire argument but mention the key rule principle and factual attributes in the current situation in an effort to help the judge feel comfortable that the law warrants the decision you’re seeking for your client.

If the analysis involves multiple elements or topics, after completing the IRA<sub>1</sub>A<sub>2</sub>C passage it’s time to offer another argumentative point heading telling the judge what ruling you’ll explain about the next topic, and then proceed to analyze that topic using another IRA<sub>1</sub>A<sub>2</sub>C passage. If you’ve supplied a good roadmap in the umbrella paragraph at the start of the brief’s Argument section, the reader will understand the transition to a new topic and be prepared to move forward to the next topic.

Thus, for the carpet example, after completing the IRA<sub>1</sub>A<sub>2</sub>C passage analyzing whether the rugs were “specially manufactured,” move forward to analyze the next required element: supply a point heading explaining why the rugs were not suitable for sale in the ordinary course of business, and then analyze this element fully using the IRA<sub>1</sub>A<sub>2</sub>C paradigm.

## **Miscellaneous Tidbits About Developing Effective Arguments**

- **Focus on accuracy** – Your job is to be the expert about how the law should apply to your client’s situation. Thus, it is crucial that you present caselaw and facts about the current situation accurately. Resist the temptation to misrepresent these materials – even slightly. If you don’t present what you read in a case or your client’s file accurately, a judge may quickly doubt your ability to understand how the law should be applied and may be reluctant to rely on your analysis. Furthermore, judges talk to one another. Thus, if you lose the trust of one local judge, you may find others similarly unwilling to rely on your work without misgivings.
- **Make it easy for the judge to use your brief** – An ideal brief is written with the thought that the judge would like to be able to borrow the analysis for his or her opinion. The easier it is for the reader to understand your brief and to lift material directly from it, the more it will help your client.
- **Focus on clarity** – Remember that judges are generalists. Even a judge with expertise in the area of law involved in the specific case will not have thought through the nuances of your client’s situation and how the law should apply to your client. Thus, don’t expect the judge to figure out why your client should win. If a non-lawyer neighbor couldn’t read your brief and understand why your client wins—based on a single readthrough—your job is not yet done. Try to make complex ideas easy to understand.

- **Be willing to invest significant time on the editorial process – for all parts of your brief.**
  - First, focus on content. Make sure all information is *accurate* and that all analytical segments display the key attributes discussed earlier.
  - Then, focus on clarity.
  - Next, focus on *quality* of the writing.
    - Avoid overuse of quotations. Judges often are inclined to discount quoted material because they know that a quotation doesn't address the current situation. Overuse of quotations suggests your inability to understand the quoted source well enough to present it in a currently relevant manner or an unwillingness to invest time to do so. Many judges simply skip over block quotations. If a quotation is needed, be sure to provide a helpful introduction, showing how the quoted language is important to the current situation.
    - Condense the material. Make it as short as possible without omitting important details. Focus on “working words” (i.e., words that carry meaning), minimizing use of “glue words” (i.e., words that simply link the working words).
    - Verify that grammar and punctuation are correct.
    - Avoid archaic legalese, favoring plain English.
  - Cite whenever needed.
    - All material from legal authority must be cited. Thus, every sentence in rule paragraphs and most sentences in case descriptions require citation.
    - Use citations that comply with *The Bluebook*, if possible. Although some judges may not be strong advocates of *The Bluebook*, some are; besides, no judge will ever fault you for following *The Bluebook*. At a minimum, make sure the citation is sufficiently clear for the reader to locate the source with ease.
    - Use pincites, allowing the reader to locate information quickly within the cited source.
  - Proofread the final work product – multiple times.
  - Verify compliance with any Local Rules.

# What Judges Long For When They Read Legal Documents

*“There are two things wrong with almost all legal writing.*

*One is its style. The other is its content.”*

- Fred Rodell

## I. Overview

- **Be concise and deliberate.** Do not feel that compelled to approach the applicable page limit. Usually, more words are not better, but rather just more.
- **Clarity is key.** Avoid using “big” words when simple words will do, but be precise. Legalese is often unnecessary and usually undesirable unless the use of terms with inherent legal significance is essential to make your point.
- **Be organized.** Be direct and clear when you present your arguments. Keep separate arguments separate, lest the court inadvertently conflate your points.
- **Edit, edit, edit.** Take the time to review and edit the final brief to make it more readable for the judge. Trim the content so that all that remains is the meat of the argument. For example, the background section should include only those facts necessary to frame the position, and the number of legal arguments normally should be limited. Excessive information can be confusing, and it may distract the reader from your point.
- **Avoid common mistakes.** In addition to editing for readability and flow, look for common mistakes such as those articulated herein. Credibility can easily be lost with a few typos and sloppy citations.
- **Proofread your brief before submitting it to the court.** Consider asking a colleague to read it and provide comments. Having someone who is completely unfamiliar with the case review your brief may elicit constructive feedback that you completely overlooked—feedback regarding whether the arguments in the brief flow logically and whether the court is likely to have any unanswered questions.
- **Adhere to the Local Rules.** Most courts have page limitations, formatting rules, and other procedural and substantive requirements that should be consulted and followed before filing.

## II. Tips for Improving Your Writing

- Avoid informal writing
- Use precise terminology
- Utilize active voice instead of passive voice
- Keep paragraphs short
- Use clear topic sentences for each paragraph
- Maintain verb tense in the same paragraph (and preferably in the whole brief/article)
- Never use more words than necessary
  - Encourages active voice
  - “owing to the fact that since” → “because”
  - “in spite of the fact that though” → “although”
  - Eliminate “the fact that” in almost all situations
  - “Whether or not” → “whether” (unless you are using it to indicate “regardless of whether”)
  - Avoid “clearly” in briefs → if it was clear, it likely would not be before the court (you risk losing credibility with the reader)
  - Avoid writing that the other party “misrepresents” something → some courts view this as an improper allegation when you mean “misstates” or “misunderstands”

## III. Tips Regarding Sentence Structure

- Use a comma to separate independent clauses when joining with a coordinating conjunction
  - “I will hold the target, and Joe will shoot the arrow.”
- Avoid Noun-verb mismatch
  - “The herd of horses *is* getting restless.”
  - “The City *feels* that this is a bad idea.” (cities do not have emotions)
  - “The decision *says* the defendant is liable.” (decisions do not speak)

- Remember “Or” is singular and “And” is plural
  - “Joe, Sue, or Sally is responsible for cleaning the dishes.”
  - “Joe, Sue, and Sally are responsible for cleaning the dishes.”
- Hyphenate compound adjectives (unless independently descriptive or ending in “ly”)
  - “Second-to-last sentence”
  - “Chocolate chip cookie”
  - “Highly objectionable position”
- Avoid Dangling (or misplaced) participle
  - A participial phrase at the beginning of a sentence must refer to the grammatical SUBJECT of the sentence.
    - Wrong: “As the largest reptiles ever to have lived, small mammals could not compete with the dinosaurs.”
    - Repaired: “Being small and defenseless, small mammals could not compete with the dinosaurs.” or “As the largest reptiles ever to have lived, dinosaurs ensured no competition from small mammals.”
    - “I have for sale an antique dresser for women with thick legs and large drawers.”
      - Place as close as possible to subject being modified → “I have for sale an antique dresser, with thick legs and large drawers, for women.” or “I have for sale an antique women’s dresser with thick legs and large drawers.”
- Dangling Modifier
  - “Hopefully, the project will succeed.” (“Hopefully” appears to modify “project” but that doesn’t make sense.) → “We hope that the project will succeed.”
- Proper pronoun Usage
  - Comparison uses nominative: “She writes better than I (do).”
  - Eliminate the proper nouns to check: “Fred, Sue, and I liked the way that Sam and she presented their case.” → Check with “I liked the way that *she* presented their case.” (note that there may be some subject-verb *disagreement* in the check)
  - For the verb “to be,” reverse the sentence to check

- “It is she.” → Check with “She is it.” (“Her” would not make sense.)
- Pronoun confusion: “Jacob called a neighbor to ask about his car.” (Jacob’s car or his neighbor’s car?)

#### IV. Avoid Commonly Misused Words

- “Your” vs. “you’re”
- “It’s” vs. “its”
- “There” vs. “their” vs. “they’re”
- “Affect” vs. “effect”
- “Accept” vs. “except”
- “Assure” vs. “ensure” vs. “insure”
  - “Assure” means to say or write the guarantee: He *assured* me that the product would be delivered tomorrow.
  - “Ensure” means to do something to make sure or guarantee that something happens: A firewall helps to *ensure* that hackers don't attack your PC.
  - “Insure” means to guarantee something with insurance or other financial instruments: In most countries you need to *insure* your car against accidents.
- “Principle” vs. “principal”
- “Discrete” vs. “discreet”
- “Good” (an adjective) vs. “well” (an adverb)
  - “Tom is a good writer.” “Tom writes well.”
- “Since” vs. “because”
  - “Since” connotes the passage of time; “because” connotes a cause-and-effect relationship
- “While” vs. “although”
  - “While” connotes that it is simultaneous in time
- “That” vs. “which”

- “That” is used with a dependent clause; “which” is used with an independent clause.
- When properly using “which,” you can eliminate the independent clause and the sentence still makes sense.
- “Which” normally is preceded by a comma
- “Which” vs. “who” or “whom” (“which” is for things; “who” or “whom” is for people)
- “Toward” vs. “towards” → actually, either is acceptable
- “Who” vs. “whom”
  - Preposition always demands whom
  - Answer the question (subject = who; predicate = whom)
    - “Whom did you ask?” (I asked him {or her} → whom)
    - “Who went to the store?” (He {or she} went to the store → who)
    - “It typically is a question of who hit whom first.” (she hit him)
- “E.g.” vs. “i.e.”
  - *e.g.* = for example
  - *i.e.* = in other words

## V. Utilize Proper Punctuation

- Comma
  - Used to separate items in a listing (including before the last item if you use the Oxford comma, *e.g.*, “Sally, Joe, and Sue”)
  - Oxford / Harvard / Serial / Series Comma (comma before the last in a series of three or more) – arguably adds clarity
  - Used to separate independent clauses
- Semi-colon
  - Used to joint two separate sentences
  - Can be used for clarification → “Several fast food restaurants can be found in London, England; Paris, France; Dublin, Ireland; and Madrid, Spain.”



- Use of conjunction after semi-colon → “I like to eat cows; however, I don't like to be eaten by them.”
- Avoid starting a new sentence with a conjunction that refers to the previous sentence
- Colon
  - Can use commas or semi-colons to separate subsequent items
  - Most authorities say that the portion of the sentence prior to the colon must be a *complete* sentence
  - “The available colors were: red, blue, and green” → “The available colors were as follows: red, blue, and green.”
- Dashes (hyphen, em dash, en dash)
  - Use a hyphen in hyphenated words
  - Use either a dash or an en dash to indicate page ranges: “pp. 5-10” or “pp. 5–10” (and be consistent)
  - Use em dashes to offset a clause in a sentence (no spaces per *Chicago Manual of Style*) → “The em dash often demarcates a parenthetical thought—like this one— or some similar interpolation.”
- Parentheses
  - Generally discouraged to set off an unnecessary clause in more formal writings (can use commas or em dashes instead)
  - Can be used to indicate supplementary information, such as “Senator Edward Kennedy (D., Massachusetts) spoke at length.” or as shorthand to indicate “either singular or plural” for nouns, *e.g.*, “the claim(s).”
- Quotation marks
  - Placement of quotation marks (after period and comma; before semi-colon, colon, and question mark)
  - Quotes within quotes (single quotes within double quotes – double quotes within single quotes if needed)
  - Per the *Bluebook*, no quotation marks and full justification for block quotes (> 50 words); single quotes not needed if internal quotes are for the entire quoted text

- Apostrophe
  - Used to indicate possessive (as discussed above)
  - Do not use with abbreviations or numbers: CLEs, 1990s

## VI. Identify and Eliminate Common *Bluebook* Errors

- Use of ellipses
  - Not needed for quoting only a sentence fragment
- Use of brackets in quotes
  - “in favor of Acme Paint’s position” → “in favor of [plaintiff’s] position” (allows the reader to apply the finding or holding to the current case)
- Use a gerund as the first word in an explanatory parenthetical
  - *Smith*, 936 F.3d at 5 (holding that non-payment constitutes a first breach).
  - “finding” vs. “holding”
  - *Smith*, 936 F.3d at 5 (“[N]on-payment constitutes a first breach.”).
- *Generally*, use citation to state reporter in same-state court briefs and regional reporters in federal or other-state court briefs → need to check local rules
- Citing unreported cases → most courts now allow, but check local rules (attach copies of cases to briefs)
- See *Bluebook* Blue Pages for Court Documents
  - See Table BT1 for Court Document Abbreviations
- Use *italics* or underlining (not small caps) in court documents
  - Both short *and long form* case names are italicized in court documents
- Use pinpoint citations
- Avoid string cites
  - Possible exception for “accord” when demonstrating that multiple jurisdictions agree
  - Need parenthetical for second (or third) cite

- Proper Italics / Underlining – *See, e.g.*, (second comma is not italicized)
- Proper Spacing – E.D. Va.; F.2d; F. Supp. 2d; n.2
- Page numbers
  - 15 Va. 95, 95 (2004).
  - 15 Va. at 105–06.
- Use Table 6 to abbreviate case names in citations
- Use Table 13 to abbreviate periodical (including law review) names
- Table 12 gives the proper month abbreviations for cites (note “June,” “July,” and “Sept.”)