

Become a Persuasive Legal Writer by Mastering the Secret Lawyer Skill: Be a Captisuading™ Communicator

Introduction

As lawyers, we think and we communicate. It's all we do. We don't sell bonds, we don't build houses. We write, we speak and we think—that's our output. Take a look at all the roles we have, none of them say that we have to throw a football or paint a house. We're an advisor, a mediator, and an advocate and those roles are all about writing, speaking and thinking.

When we write, we are expected to be captivating and persuasive. We must draw our audience in—we must get, and keep their attention. The key element for legal writing, however, is that we must persuade them to believe in our position, whether it's because we want them to rule in our client's favour or otherwise. It's a principle that applies to writing in all areas of the practice, whether it's in a trial brief or in correspondence. Our need to captivate and persuade is a constant. I call it being Captisuading™.

Understanding the Obstacles

To truly grow, it's necessary to understand the obstacles to being a captivating and persuasive lawyer. It's a set of fears that are applicable to all forms of legal communication in one way or another—fear and distraction. The world of legal writing provides unique fears and distractions that are particularly intimidating. For example, missing a critical factual element in a pleading could be disastrous, as could omitting a crucial argument in a brief. Failing to preserve an issue for appeal could

mean a malpractice suit and maybe even disciplinary actions. These are real consequences that arise in the legal writing context and some of them can't be fixed after-the-fact.

Develop a Strong Process

One way to eliminate the fears that are inherent to legal writing is to employ a good writing process. We'll discuss the following steps for doing so in this seminar:

Step 1. Do a "ROMA" Analysis. Identify your:

- a. **R**ole
- b. **O**bjectives
- c. **M**edium
- d. **A**udience

Step 2. "OWN" the matter. Become familiar with the file by communicating the details to your client:

- **O**rganize the facts and outline the case briefly
- **W**rite out a short summary: What you know and intend to do.
- **N**otify the client
- **H**ow to Outline

Step 3. Issue Spotting and Research

- Identify the Issues
- Conduct Your Research
- Identify and Verify the Facts
- Form the Outline

Step 4. Understand your adversary's case

- Their best facts
- Their best issues
- Which you do need to address?

Step 5. Identify the critical facts

- Revisit the fact organization in light of how you've prioritized the issues

Step 6. Prioritize the issues and begin to seriously outline the argument

- Pare down: Identify your best arguments
- Evaluate the strength of each issue
- Determine your "Critical Client Points"
- Develop your theme

Step 7. Build out the argument, the final frame.

- Consider the order of your argument

Step 8. Step Back: Start to write the facts. What is your story?

- Make your facts persuasive
- Write your client's story
- Humanize the client
- Demonize the opposition
- Distinguish problem facts
- Add the passion

Step 9. Write the argument: The Paragraph Builder/Point Builder

CONCLUSION

- Start by stating your claim, or what you're trying to prove in the section

ISSUE-- (You'll see that I'm not a big fan of this section- it can probably be eliminated.)

- Identify the issue

RULE

- Introduce your support
- Set forth the support
- Interpret and explain the support, focusing on how it connects to the topic
- Give some sort of transition to your case, providing a clue to the connection you're developing.
- Introduce the relevant portion of your case that you wish to discuss
- Give the information from your case

ANALYSIS

- Interpret and explain
 - How are the two connected to one another?
 - Apply the rule to the facts
 - Consider the actors that appear in the support and consider their relationship to your clients position
 - How does that connection support your idea/topic?
 - How does the connection support your theme or message?
 - Draw analogies or distinctions

CONCLUSION

- Draw some conclusion from the connection that relates back to the topic sentence
- Transition to the next paragraph/section
- Tell them the desired outcome for each issue
- Ask for what you want

The Word-o-holic's Anonymous 12 Step Program

1. If your writing has become unmanageable, use less words
2. Eliminate Empty phrases
3. Avoid Circumlocution
4. Avoid "the usual suspects"
5. Shorter...
6. ...Stronger...
7. ...but still Stylish
8. Appropriate
9. Don't overdo it
10. No clichés;
11. No legal ease;
12. Speak in Plain English

Step 10. Edit and Revise: Employ the Editing System

Overall Review:

- Check the theme
 - Did you hit the theme/message
 - Is your tone on display
- Eliminate the Frivolous
 - Any Frivolous Facts?
 - Wasted Issues?
- Did you make your request?
- If applicable, think about what the decision or judgment should say—have you given the judge everything they need to make that decision? They should be able to write it from the contents of your brief alone.

Edit the Words:

- Short, Strong and Clear
- Highlight every verb and modifier- every adjective and adverb and consider
 - Do you need them. Are they helpful or distracting? Do they make a sentence more effective or harder to follow?
 - If you need them, could they be stronger?
- Keep an eye out for words that are repeated

Edit the Sentences

- Count sentence length: 15-20 words
- Read the first word of every sentence, if it has a comma after it, delete it (usually).
- Reread? Rewrite!
 - If you have to read a sentence twice to understand it, it needs to be rewritten.

Edit the Paragraphs

- Do you have one idea per paragraph?
- Do the ideas flow logically?

Appearance and Technicalities

- Widows and orphans
- Citation errors
- Page Numbering
- Spell check

A Few Tips:

- Read it out loud
- Lawyer Peer review
- Get a non-lawyer to read it
- Use the “Find and Replace” function to find things you know are a problem

Develop Persuasive, Compelling Content and Make a Captivating Written Presentation

The other obstacle, distraction, is a bit tougher, but there's a two-step process to overcome that. We want to focus our reader's attention on the material so that they're completely absorbed. It's about attracting strong interest in your material and keeping your reader engaged in the text. As you read this text you'll see that much of it will fit into the writing process described above.

Developing Compelling Content

The goal when developing a legal writing is to persuade with the quality of your content. The "persuading" part certainly seems obvious, but the idea that it's all about the "quality of your content" is not something that's readily apparent. Most lawyers attend writing seminars hoping to learn the secret trick that they can employ to magically achieve persuasiveness. Unfortunately it doesn't exist. Not only that, but most lawyers are looking in the wrong place.

Most lawyers are looking on the surface—solely at the structure of sentences or the quality of the vocabulary. Those things are certainly important, but there's more. We need to develop the underlying content of our writing that will be persuasive on a substantive level. There is a four step process to achieving that.

1. Analyse the matter that you're writing about. There are several items for you to understand in this regard:

- Understand your role. Are you an advocate for a client, an analyser for a judge, an evaluator for a superior?
- Determine the forum in which you're operating. Where are you submitting this writing? A court or third party decision maker, public hearing, negotiation or to a client?

- Identify your audience so that the content can speak to them in particular. Is it a third-party decision maker like an arbitrator or a judge, a partner or colleague, a client? Your content will need to be tailored to each differently so you can connect with each. They all have different motivations and your content needs to speak to those individuals motivations.
- Define your objective—what do you want to receive or convey? Are you seeking victory in a motion or a settlement perhaps?

2. Comb through your case and determine your “critical client points” and structure your client’s message. Obviously, that consists of the critical elements of your client’s case. Include these points when you get to the outlining phase of your writing and also make sure that you begin to incorporate the “theme” of your client’s case. The message that you’re trying to get across needs to be reflected in the outline because that’s how you ensure that your client’s message is embedded into the substance of your writing.

Here’s a helpful tip: Make it Manageable. The mass of facts and issues that are thrown at a lawyer can be overwhelming. One way to make it all easier to digest, and ultimately easier to communicate in writing, is to break it all down into manageable points, then string them together with transitions. That’s how we structure the client’s message effectively.

3. Spin it. That’s the not-so-formal way of saying, “tailor your message to address your particular audience’s motivation.” In other words, make a connection with the audience. There are various writing techniques that can be employed to achieve this, such as:

- Using the appropriate tone for the situation;
- Including an appeal to logic or reason versus policy or emotion, depending upon which will be more likely to move your audience

- When writing your facts, use as much detail as possible. To do this you must gain an intimate knowledge of your client’s case by being thoroughly prepared

4. Add Injections (add flavouring...add spice and pop). In documents where the forum permits it, go back to the text you’ve prepared and add what I call, “flavourings” or “spice and pop.” These are the types of elements that captivate the reader such as real life examples, anecdotes and stories.

There are a few important limitations, of course. This type of “flavouring” can only be used if the forum permits. Anecdotes, for example would not be appropriate in an appellate brief. Also, only add these elements if the message is germane to the client’s case. Adding elements that are not consistent with your client’s message won’t be spice and pop—they’ll be sour and fizzle. Finally, when using humour, be wary of the standards of professionalism in the practice of law. For instance, off colour humour is not acceptable under any circumstances, so stay away from sexist, racist or other inappropriate remarks.

The key to creating effective flavouring that enhances your persuasiveness is making sure that those elements are meaningful. They can’t be fluff or irrelevant. The material must add value, not just take up space on the page or act as a distraction. Only use this type of material if it makes the content more powerful, memorable, or exciting.

Create a Captivating Writing

Persuasive legal writing attracts and keeps the interest of the reader. Our goal is to have the reader become engaged in the material so that our message penetrates the reader’s psyche and is ultimately accepted or adopted by the reader.

Learn to be Succinct

Believe it or not, but one of the keys to being a captivating writer is to pare down what you actually write. It's not simply about being short—it's about being succinct and there's a difference. Being succinct makes your writing more persuasive. It seems counter intuitive, but as you read through the elements that follow, I think you'll see that it makes sense.

Be Concise. In other words, write no more than is needed. I realize this is almost impossible for a lawyer, but we need to try.

Extraneous information is the functional equivalent of white noise to the reader. Avoid things like frivolous or useless alternate legal theories or confusing arguments. It also means paring down the issues and eliminating the weakest among them. Most likely those weak issues will add nothing to your message. Granted there's the problem of making sure that you preserve important issues for appeal, but that maxim doesn't include preserving even the weakest or most tangential of issues. At some point you've got to prioritize and pare down.

Also, too many lawyers believe that we need to repeat ourselves if we truly want to pound an idea home. In reality, the only result will be the pounding headache suffered by your reader. Make your good points and move on—they'll be much more persuasive if you make them clearly and concisely and simply say them once.

Be Direct. A lawyer who is writing in a direct manner focuses on the necessary topics and asks for what she wants.

This is not literature, so there's no reason to employ tactics like hiding the ball or building up suspense. Those tactics are useful in other formats, but becoming a persuasive legal writer means telling your audience what you want them to know up front and being clear about what you're asking them to decide, believe or do.

Most times, being succinct means that you need to train yourself to write less. It's not always the case, but it's a pretty fair generalization. It's hard to stop yourself, but you need to remember that no one has the time to read flowery prose in this day and age—trial Judges don't want to see it in briefs or hear it in arguments because all they have time for is to read the bottom line. It's the way of the legal world these days.

Be Clear. Writing in a clear fashion means writing without distraction or ambiguity. The place to start in this regard is with Plain English. There is absolutely no reason to write with what has commonly been referred to as "legal-ese." In fact, throughout the law and government service, there is a "plain language" movement that has gained considerable momentum over the past few decades. Consider the following explanation from the U.S. federal government.

What is Plain Language?¹

Plain language (also called Plain English) is communication your audience can understand the first time they read or hear it. Language that is plain to one set of readers may not be plain to others.

Written material is in plain language if your audience can:

- Find what they need;
- Understand what they find; and
- Use what they find to meet their needs.

There are many writing techniques that can help you achieve this goal. Among the most common are:

- Logical organization with the reader in mind
- "You" and other pronouns
- Active voice
- Short sentences

¹ This section is taken from a website of the US federal government located at: <http://www.plainlanguage.gov/whatisPL/index.cfm> last checked by the author December 1, 2009

- Common, everyday words
- Easy-to-read design features

No one technique defines plain language. Rather, plain language is defined by results—it is easy to read, understand, and use.

In Canada, Plain Language is explained on the Language Portal, which can be found at <http://www.noslangues-ourlanguages.gc.ca/prps-bt-eng.html>

The Canadian Bar Association has also provided helpful direction about how to use plain language in legal writing. That can be found at this link:

<http://www.cba.org/cba/practicelink/cs/plainlanguage1.aspx>

The US legal world has embraced the plain language movement as well as illustrated by the following resolution that was adopted in 1999²:

American Bar Association House of Delegates

“RESOLVED, That the American Bar Association urges agencies to use plain language in writing regulations, as a means of promoting the understanding of legal obligations, using such techniques as:

- Organizing them for the convenience of their readers;
- Using direct and easily understood language;
- Writing in short sentences, in the active voice; and
- Using helpful stylistic devices, such as question-and-answer formats, vertical lists, spacing that facilitates clarity, and
- tables.

² <http://www.plainlanguage.gov/populartopics/regulations/aba.cfm> last checked by the author December 1, 2009

To avoid problems in the use of plain language techniques, agencies should:

- Take into account possible judicial interpretations as well as user understanding;
- Clearly state the obligations and rights of persons affected, as well as those of the agency; and
- Identify and explain all intended changes when revising regulations.”

Other Techniques that Attract and Keep Interest

Be (personally) Interesting, be yourself. Every one of us is an interesting person and we all have things that people can identify with. There is something intriguing about every single one of us. I don't care who you are or how boring you think you are. If you bring in a part of your own story, chances are someone will find something they can identify with. Again, this isn't appropriate in every situation, but if the forum allows it, don't be afraid to let your own story come through in your writing. It will be captivating.

One way to allow yourself to come through in your writing is to make analogies to things you like or are familiar with. Then go back and "inject" yourself and your personality into your writing.

Be passionate. Passion is captivating. It attracts people and it keeps their attention. Every lawyer has the ability to be passionate because we can each make an effort to find the passion in our position, or identifying something about our client's case that makes us feel passionate about the endeavor about which we're writing.

Finding the passion in your position is a unique skill for lawyers and it's very much a *skill*. Developing that skill comes down to your attitude. You've got to be interested and personally moved by what you're writing about. Sure, some arguments are boring, but you can always find a way to care.

Find the passion by being selfless and helpful. Remember, we're lawyers, which means that we're not in this for ourselves. Think of your client's position: Identify who you're helping and identify their emotional attachment to the situation. What do they have invested in the outcome? What affect

will one decision or the other have on them? Answer these questions, then “inject” those answers into your written content.

Be Memorable. My first drama instructor taught me a principle that I think can be aptly applied to the world of legal writing. People remember the first and last thing you say the most. That’s not to say that they don’t remember the things in the middle, but the first and last things seem to stick with them the most. Thus, when the medium and the forum permits, *open with a bang and close with a blitz.*

Writing Techniques

Here are a few comments about various writing techniques that we'll discuss in the program:

Try using Distinctive Patterns: Just like in fashion, patterns matter in writing also. They allow you to emphasize points and make the writing more memorable. Consider using techniques like, "parallelism" which helps emphasize various points have the same level of importance. For instance, you could say that your client was the employee, but you might also humanize him by saying that, "Bob was an employee, an artist and a father."

Vary your sentence length and vary your sentence structure: Remember sentence structure? Simple sentences (which have only one main clause)...Compound sentences... Complex sentences? Most people forget about the details, but one thing that we can all appreciate is the need to vary our sentence length and structure. For example, when we rattle off too many simple sentences in a row, we end up with a "choppy" writing. The way to avoid that is to vary the sentences. So, instead of listing three simple sentences in a row, try two simple sentences, followed by one that is more complex.

Show don't tell: If you've ever taken any advanced writing class, you've certainly heard about this technique. It means is that you should illustrate your point, rather than simply stating it. Example: You could simply state that, "The plaintiff was not a good welder." However, you could also make the point through illustration, "The plaintiff was disciplined consistently over the past two years for making various welding mistakes."

Use unique sentence openers: Try using some funky ways to open your sentences, instead of the lazy “Thus” and “Hence” that we all seem to throw in as a matter of habit. The added benefit is that using unique phrases can also allow you to work in a good transition. But here’s a word of caution... stay away from adverbs like “Clearly,” or “Obviously.” These words sometimes give off the impression that you’re saying, “Hey reader, you’re stupid if you don’t agree with whatever comes next.” Let’s try to avoid insulting the audience-- instead, just *show* that it’s “obvious” through illustration. What do I mean? Many lawyers say, “It is beyond questioning that...” Well, if it is really beyond questioning, then show us why and let the reader come to that conclusion on their own.

Some other writing techniques to consider:

- Metaphor and Simile
- Rhetorical Question
- Overstatement (aka hyperbole)...exaggeration
- Paradox
- Irony

The Anatomy of a Persuasive Paragraph

Every persuasive writing has some common critical elements. Here are the sections that you will find in every successful legal analysis:

- Introduction
- Thesis (yes, a thesis!)
- Present the position (Facts, Issue, Rule)
- Analyse
- Conclude

These elements look different, depending on the type of writing you're creating. For instance, if you're doing a formal brief that contains a Preliminary Statement, then that's where you may find the Introduction and Thesis. If, however, you're writing a long piece of persuasive correspondence, you may not separate these items out into formal sections at all. Regardless, they must all be represented. Consider how the rest of these elements might be reflected in a legal brief.

- Introduction at the outset of your writing
 - Develop a Textable/Tweetable Thesis
 - Sometimes you may have a document that contains a formal introductory section (labeled a "Preliminary Statement" or some similar phrase. Place that Thesis at the end of the introductory section.

- Present the Position in the Statement of Facts
 - Utilize storytelling techniques (humanize, demonize)
- Legal Argument- Analysis
 - A legal analysis is all about making connections...what kind of relationship do we form between pieces of evidence and between the evidence and the rules/law
 - Points are located here
 - The persuasive structure discussed above is repeated in each point:
 - Thesis for each point- need focus. What are you trying to convey here (and nothing else)
 - One idea per point. If you must, make sub-points. PT: Make it manageable
 - Issue- whether you state it or not, you must identify it
 - Identify and present the relevant facts and law
 - Analyse—connect
 - Conclude the point
- Conclusion—Ask for what you want!

Detailed Outlining Concepts

WRITING IS ABOUT: THINKING, ORGANIZING, EXECUTING

STEPS ABOUT HOW TO BUILD A WRITING

REMEMBER: MAKE THESE STEPS YOUR OWN

THINKING:

1. Do a “ROMA” Analysis. Identify your:
 - Role
 - Objectives
 - Medium
 - Audience
2. Idea Statement and Brain Dump
3. “OWN” the Matter. Become familiar with the file by communicating the details to your client:
 - Organize the facts and outline the case briefly
 - Write out a short summary: What you know and intend to do.
 - Notify the client
4. Mind Map– www.bubbl.us
5. Research

ORGANIZING

[Remember as we go along that we're developing a CREAAC analysis for the legal argument...]

6. Write your initial thesis (You'll use this in the CONCLUSION section below). *Initial*, not final thesis
 - a. Remember that this is an advocacy document. You are convincing the judge to adopt your position. Which means....you need to make your position clear.
7. Develop an Annotated Source List- Your notes and annotations. Not a case brief- a statement of how it fits into your argument (this is for the RULE section of CREAAC)
 - a. Determine the key facts of this case. Also determine the rule that each case establishes. Write it out.
 - b. If there are several cases that work together, then preliminarily synthesize the rule that the cases present. This is important because they will form the basis for the "Rule" section in the CREAAC section below. I discuss rule synthesis in greater detail in the "argument" section below. You might want to skip ahead to check that out briefly.
8. Determine your "Critical Client Points"- gather your critical facts (these next few points are for the ANALYZE/APPLY Section of CREAAC)
9. This part is tricky. There is no question that the hardest part of legal writing is putting all of the stuff you have in some semblance of order (at least I think there's no question about that). Here are some tips that I think help organize the facts, the issues, and the research. Keep in mind, however, that this is not an exact formula that can apply to every person and every case. Hopefully it will be a starting off point for you, and you can tailor it to fit your needs as you move along in the process.
 - a. Separately, group your critical facts with the law/source they relate to. You need to do this separately, because you will have a statement of facts that will have all of the facts together. But then, you will address some of those facts at different times in the body of your legal analysis. You will use this information in the "Analysis and Application" section of CREAAC below.
 - b. Put each source and the critical facts on its own page. I call each page is a "source grouping"
 - c. What I'm trying to get you to do here is to start connecting the facts and the law. You're going to do that in greater detail in the argument section, but at least this process will get you started in making those connections.
10. Re-read your thesis and determine the issues you'll address in your ANALYSIS.
 - a. List those issues

- b. Make sure each issue relates back to your thesis. If it doesn't, you need to tweak something. It could be the issue, or it could be the thesis. Think.
- c. Match the sources/source groupings to your issues. You might want to print out your source groupings and arrange them physically. Doing it physically might help you get it in better order. Again- this is my attempt at getting you to start to connect all of the material. Make the process yours by tinkering with it as you see fit.

11. Start organizing/arranging your Analysis/Argument

- a. Determine the presentation approach: How do these issues make your argument? Is this a chronological approach? Are they alternative theories of recovery? If so, is it based on strength of argument? Or are they issues of substance vs. procedure?
- b. Identify the theme of your Argument
- c. Once you determine the approach you're pursuing, put the issues in order. Which comes first, second, last, etc., will be dictated by the approach you're pursuing. This order is the beginning of your outline
- d. If applicable, pare down. Identify your best arguments. Maybe weak arguments are distractions and should be discarded

12. Outline your side of the Argument

- a. Continue putting the issues in order
 - i. Make sure you have the source groupings (the sources and the critical facts that relate to each source) listed under each issue
- b. Break down each issue into sub parts. What logical steps do you need to take in order to present these issues. Let the sources guide you. Make sure that these subparts flow coherently
- c. After this is broken down, check the order of your issues. Are the issues presented in a coherent manner? Does the order make sense? Consider whether you need to rearrange the presentation of your issues.
- d. After you check the order, revisit the thesis. Do your issues relate back to the thesis? Does each issue prove the thesis?
- e. Determine potential sections/points. Will each issue be its own section/point? Do some issues need to be grouped together into a larger point/section?

13. Outline the other side- Evaluate your adversary's case

- a. What are their best facts? What are their best issues? Determine which you need to address
- b. Fit these items that you feel you need to address into your larger outline
- c. Revisit your thesis to make sure it still makes sense

EXECUTING:

THE DRAFT

14. STATEMENT OF FACTS (the Statement of the Case)— Build your narrative. Build your story. Connect with the details
 - a. Revisit your Critical Client Points. Do you have all of the critical facts you'll need? What other facts are necessary to develop your narrative and tell your story.
 - b. Consider how you'll arrange the facts. Chronological? Are there several story lines that you need to develop? Will you develop them independently, or will you go back and forth.
 - c. Outline the presentation of your facts
 - d. Use the outline you've developed and tell your client's story. Write the narrative
 - i. After you have the basics down, refine the facts. Make them persuasive
 1. Humanize the client
 2. Demonize the opposition
 3. Distinguish problem facts
 4. Add the passion

15. THE ARGUMENT -- CREAAC. First, a comment about organization. The CREAAC analysis below needs to be tailored for your matter. You may, for instance, start with a conclusion that addresses all of the issues and sub issues of the case (the first "C" of CREAAC"). Then you may do an individual CREAAC analysis for each issue or sub-issue. It all depends on how you choose to organize the argument section. Here is some guidance on each section, but remember, it needs to be tailored to fit your situation.
 - a. CONCLUSION— Now you need to finalize your thesis. Start by stating your claim, or what you're trying to prove in the section. Each of your issues below, in the Argument/Analysis section should all connect with/prove this thesis
 - i. What is your claim?
 - ii. This is an original thought. It requires that you be bold.
 - iii. Use the word "because"— that forces you to answer the question "Why"
 - iv. What type of argument are you making?
 1. Based on precedent? Saying the prior law is good or bad? Why?
 2. Interpretive? Examining the language of some law or document, or even a constitution?
 3. Normative? Are you asking judgment on some idea— saying that it's not supported by norms, or morality, or it's bad or unjust? Note the word "should" here

4. Policy argument?
 5. Institutional— that maybe something is beyond the permitted power of a branch of government, perhaps?
- v. If this is a larger statement about your claim for a complicated matter, this may be a thesis *paragraph*, not just a thesis statement.
- b. RULE- take the rules that you gleaned from the cases above and set them forth here. This is like the conclusion for the Explanation section.
- i. Synthesis the rule. Most don't do this. make a connection among the precedent
 1. Great definition is from Prof. Paul Figley, from American university's Washington College of Law when he write, "...to synthesize a rule—the attorney must examine the authorities that have applied a body of law in actual situations, derive from those applications the key principles of interpretation, and state those principles as a rule."¹
 2. You're pulling together common elements from different sources and reconciling them. Bending them together into a coherent statement that governs the legal issue you're addressing
 3. Prof. Figley continued, "A rule should meet three criteria. First, it should be simply stated—concise enough for the reader to grasp easily. Second, it should be readily applied— unambiguous because the terms have defined, non-circular meanings, specific enough to give guidance for a new set of facts, but not too narrow to be useful. Third, it should be consistent with the cases and law in the jurisdiction—if applied to the existing cases, the rule would accurately predict the outcome of each."²
 4. Maybe chart it out— sources on the left, vertically, elements horizontally. The last column on the right would be "Recovery" or "Result."³
- c. EXPLAIN— explain that rule. Give the connection to the precedent
- i. Focus on how the rule connects too the issues we care about

¹ Journal of Legal Education, Volume 61, Number 2 (November 2011) at 247

² Journal of Legal Education, Volume 61, Number 2 (November 2011) at 247, footnotes omitted

³ This idea cam from an article entitled, "The Synthesis Chart: Swiss Army Knife of Legal Writing, by Prof. Tracy McGaugh of the Texas Tech university School of Law, Perspectives: Teaching Legal Research and Writing Vol. 9, Winter 2001.

- ii. Don't forget to connect to the policy- if applicable. May not be relevant, but don't forget to consider it.

d. ANALYSIS/APPLICATION- write the argument based on the outline above

- i. This is the most important part of the writing, but also the most difficult. The process is part art part science, so to speak.
- ii. Within the analysis of each issue or sub-issue you need to make connections:
 - 1. Connect our facts to the facts of the precedent
 - a. Consider the actors that appear in the support and consider their relationship to your clients position.
 - 2. Connect our facts to the law/rule
 - a. Make sure that the connection between the facts and the rule support your theme, or the type of legal argument that you chose to pursue. Remember— that could change among issues/sub-issues
 - 3. Go back and take a look at the source groupings you created in earlier steps. That should help you in this regard.
- iii. When you are writing, be aware that making those connections are a three part process:
 - 1. Introduce the relevant portions from your case
 - a. EX: "The plaintiff, in his trial testimony stated..."
 - 2. State the information you're connecting with
 - a. State the rule, case, facts, policy position...whatever
 - 3. Explain how those two things are connected
 - a. When connecting the facts, consider the actors that appear in the authority...show their relationship to your client's position

16. CONCLUSION

- a. Ask for what you want
- b. Make it relevant
- c. Maybe make a connection to the future? Depends on the context

17. Don't forget about writing! Throughout the execution, remember the key writing components like...
- a. Topic sentences, each of which should relate back to the thesis
 - b. Transitions— the secret sauce of connections
 - i. Within the paragraphs
 - ii. Between paragraphs
 - iii. Between sections
 - c. Connect with the audience psychologically. Make their reading effortless by avoiding speed bumps
 - i. Dates
 - ii. CAPS
 - iii. Latin
 - iv. Fonts
 - v. Parentheses
 - vi. FAQs?
 - vii. Gender neutral issues
 - viii. If the context permits, connect to the person through a “you” focus

EDITED DRAFT

18. Overall Review:

- a. Check the theme
 - i. Did you hit the theme/message
 - ii. Is your tone on display
- b. Eliminate the Frivolous
 - i. Any Frivolous Facts?
 - ii. Wasted Issues?
- c. Did you make your request? Asked for what you want?
- d. If applicable, think about what the decision or judgment should say—have you given the judge everything they need to make that decision? They should be able to write it from the contents of your brief alone.

19. Edit the Words:

- a. Short, Strong, and Stylish
- b. Clear, Concise, and Direct

- c. Highlight every verb and modifier- every adjective and adverb and consider
 - i. Do you need them. Are they helpful or distracting? Do they make a sentence more effective or harder to follow?
 - ii. If you need them, could they be stronger?
- d. Keep an eye out for words that are repeated

20. Edit the Sentences

- a. Count sentence length: 15-20 words
- b. Read the first word of every sentence, if it has a comma after it, delete it (usually).
- c. Reread? Rewrite! — If you have to read a sentence twice to understand it, it needs to be rewritten.

21. Edit the Paragraphs

- a. Do you have one idea per paragraph?
- b. Do the ideas flow logically?

22. Appearance and Technicalities

- a. Widows and orphans
- b. Citation errors
- c. Page Numbering
- d. Spell check

23. A Few Tips:

- a. Read it out loud
- b. Lawyer Peer review
- c. Get a non-lawyer to read it
- d. Use the “Find and Replace” function to find things you know are a problem

