

(UN)WICKED ANALYTICAL FRAMEWORKS AND THE CRY FOR IDENTITY

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IRAC is not the arbiter of legal analysis. In fairness, it never claimed to be. Yet despite IRAC's willingness to be a prototype of analytical structure incapable of providing creative depth—a sentiment that many within the legal academy have readily acknowledged for decades—its dominance still persists sustained by a presumption of innocence. This presumption harms novice legal writers who do not see IRAC's shallowness, and instead blindly follow its siren of seductive simplicity as a norm for the process of legal analysis. Critiques of IRAC are not novel, but my aim is not to challenge IRAC as a structural framework, rather, I cast IRAC as an overbearing character engendering an identity crisis in legal writing and stunting cultural awareness as professional growth in law students.

Situating this discussion in Law & Literature discourse, I use the musical Wicked—the untold story of the Witches of Oz—as a contemporary framework to juxtapose identity performance with legal writing. My thesis is twofold: First, comparing IRAC to Glinda the Good Witch, I suggest that IRAC is a rigid, objective, and neutral approach to legal analysis, an approach that mimics white normativity. Thus, I question its ability to serve as an entry point for a more complex analysis or platform for Other experiences. Second, comparing Analytical Frameworks to the Wicked Witch of the West, I suggest the richness of such frameworks are truly the transformative process of legal analysis, serving not as an impediment to students' authentic identity as lawyers, but as further development of it.

Heralded as a cultural phenomenon, Wicked transformed the way its audience viewed The Wizard of Oz. Wicked not only narrated the Wicked Witch's identity from her perspective, but it also provided a revealing reflection on the Good Witch's identity—her privileged life and superficial rise to popularity. In

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contrast to the tension that exists in replicating rigid paradigms, such as IRAC, this literary approach demonstrates the richness of legal analysis to convey the human experience and make the law accessible, particularly for those who exist at the margins. In the end, the audience loved Wicked—not because it outshined The Wizard of Oz—but because Broadway finally shared with the world the identity formation of the “Wicked Witch of the West.” Her name is Elphaba, and she’s not so wicked.

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PROLOGUE

*“I’m through accepting limits ‘cause someone says they’re so.
Some things I cannot change but ‘till I try I’ll never know.” —Elphaba, the
“Wicked Witch of the West”¹*

IRAC² is not the arbiter of legal analysis. And as a professor of legal writing raised on reductive paradigms like IRAC, I now stand at a slightly uncomfortable juncture to examine IRAC’s innocence through an identity performance lens. The late Toni Morrison once penned, in reflecting on her wax and wane process of fiction writing, that many of her novels felt “impossible . . . equally undoable,” and she remained “astonish[ed] [at] how, the more

¹ *Wicked Quotes*, GOODREADS, <https://www.goodreads.com/work/quotes/12807927-wicked-the-complete-book-and-lyrics-of-the-broadway-musical> [<https://perma.cc/UT8K-8MGQ>].

² An acronym standing for Issue, Rule, Application and Conclusion. Its contours will be divulged in detail in this Article. Stay tuned.

work one does, the more difficult it becomes, the more impossible the task.”³ Hardly a Morrison in my own right, I empathize with her struggle.

As an identity performance scholar,⁴ I sought out on a journey to reflect on the relationship between legal writing and identity formation.⁵ My greatest ache

³ TONI MORRISON, *THE SOURCE OF SELF-REGARD: SELECTED ESSAYS, SPEECHES, AND MEDITATIONS* 247 (2019).

⁴ See Leslie P. Culver, *No Matter How Loud I Shout: Legal Writing as Gender Sidelining*, J. LEGAL EDUC. (forthcoming 2021) (viewing legal writing, which is often outside the unitary tenure program in legal academia, as a mode of gender sidelining). See generally Leslie P. Culver, *Conscious Identity Performance*, 55 SAN DIEGO L. REV. 577 (2018) [hereinafter Culver, *Conscious Identity Performance*] (drawing on co-cultural theory, which describes how non-dominant cultures communicate in a dominant setting, as a framework for discussing the pressures marginalized groups feel to perform their identity in a predominantly white legal profession); Leslie P. Culver, *The Rise of Self Sidelining*, 39 WOMEN’S RTS. L. REP. 173 (2018) (examining the collision between impostor phenomenon and gender sidelining, which results in a false endorsement of inadequacy and leads women to self-sidelining); Leslie P. Culver, *White Doors, Black Footsteps: Leveraging “White Privilege” to Benefit Law Students of Color*, 21 J. GENDER, RACE & JUST. 37 (2017) (examining the value of intercultural mentoring relationships between white law professors and law students of color in efforts to reduce ethnic bias against these students).

⁵ This journey between legal writing and identity formation became complex when I met Thomas (name changed for privacy), a young African American male law student. Thomas was a regular visitor to my office hours during his first year of law school. In a short time, we developed a natural rapport that fostered an atmosphere of ease. On one particular day he visited my office to receive feedback on his most recent legal memorandum submission. He sat across the desk watching me review his memo. With my pen in hand, scribbling and circling at various points, I simultaneously articulated verbal comments, and every few minutes would look up to engage in a short discussion regarding those comments, and then return to his memo, head down. He continued to wait patiently for my next feedback reprise, and I could hear him take a few deep breaths and shift slightly in his seat. Then on the end of one of his breaths, he said nervously, “I just don’t want anyone to think this was written by a Black man, ya know?” I stopped. Still looking down, I took a deep breath of my own. Looking back, I know this moment only lasted seconds, but in my head flashed years of my own ethnic experiences, disappointments, frustrations, and anger. I looked up from his memo, put my pen down, met his eyes, and sighed. Slowly I responded, “Yeah. I know.” I will never forget this moment. I was angry that this young Black man, who was diligently meeting with his professors and the teaching assistants, attending campus academic success workshops, still needed to worry if the very words on the page of his memo would reveal his true identity as an African American man, and worse, discredit the hard work that he has done. I was angry that despite his membership in student clubs and organizations, clinics, pro-bono activities, and internships, that at the end of his three years in law school—donned with all the esteem and privilege of this noble profession—he was still just a “Black man,” with all the stereotypes and stigmas that entails. And if I am honest, I think in that moment, I was reminded of my own reality as an African American woman, and I was angry because deep down I knew he was right. I repeat Thomas’ words often in my mind. The fear of not having his writing reveal his ethnicity is woven with complexity; the thoughts of where to begin are almost suffocating. That African American people have been subject to a history of discrimination is widely known, and so too is the dominance of “White” people in the legal profession. And in the legal profession, perhaps less well known, is the existence of bias against legal writing produced by African American people as compared to “White” people, based not necessarily on document errors, but on the reviewer being made aware of the writer’s ethnicity. See ARIN N. REEVES, *WRITTEN IN BLACK & WHITE: EXPLORING CONFIRMATION*

was hearing my students speak of legal writing as foreign, inauthentic, rigid, and just hard. I can do nothing of the latter—the process is hard—but I am saddened by the former. Writing has always been the outlet that has set me free, allowed me to push through pain, to capture and return to joy, and as of late, to find my authentic voice in a professional space not created by design for people like me.⁶ Legal writing has been no different.

This reflection raised two questions: first, what was “good” legal writing, and was it tethered to an ethnic identity? And second, how might legal writing, the process, not the product, be useful in shaping student’s identity development as lawyers? As to the first, I became more resolved of the white ethnic identity of reductive analytical paradigms for reasons I will explain below.⁷ As to the second, and really in response to the ethnic identity resolve, I became equally resolute in changing how I talked about the process of legal writing, and lawyering for that matter, to allow the process of legal writing to add depth and dimension to students’ existing identity, instead of suppressing it. To be clear, I did not invent new terms to, for example, replace analogical or deductive reasoning. But, if identity is the “the condition of being oneself or itself,”⁸ then I allowed myself to be critical of analytical methods that seemingly define and bound⁹ the legal profession, so that I could teach legal writing in a way that grants students agency to “manipulate the very language and discourses that define them.”¹⁰

BIAS IN RACIALIZED PERCEPTIONS OF WRITING SKILLS (2014), <http://nextions.com/wp-content/uploads/2017/05/written-in-black-and-white-yellow-paper-series.pdf> [<https://perma.cc/WGV9-F35R>]. When Thomas made his statement, I was aware of this unfortunate history and research, and perhaps it was because of this knowledge that the best I could offer him was, “Yeah. I know.” But that response was hardly a response at all. It was more of an excited utterance, *less* the excitement. Looking back, I think there may have been additional words that I offered along the lines of, “you are a good writer,” “this is well-written,” and the like. But my recollection is now burdened with what I did not say. Perhaps I should have said, “If it’s good, it’s good. Your ethnicity doesn’t matter!” Not only is that not true—ethnicity certainly matters—but even those words seem trite. In this Article I take care to use the term ethnicity as opposed to the socially constructed term ‘race’—and thus similarly use quotes around the term “White” or “Black” people where necessary.

⁶ By this I mean an African American woman law professor.

⁷ The significance of this resolution is based on the previous title of this work being “De-Racing Legal Writing,” where in light of my interaction with my student, Thomas, *supra* note 5, I hypothesized that good legal writing is not “White,” that it does not belong to any one ethnicity. I was wrong. And the journey toward this realization has been both a pedagogical and emotional pilgrimage to say the least.

⁸ *Identity*, DICTIONARY.COM, <https://www.dictionary.com/browse/identity> [<https://perma.cc/5KF4-BRVS>].

⁹ See, e.g., Holli R. Leggette et al., *Developing Writing Identity in an Advanced Agricultural Communications Media Writing Course*, 99 J. APPLIED COMM’NS 67, 67 (2016) (quoting Sheldon George, *The Performed Self in College Writing: From Personal Narratives to Analytic and Research Essays*, 12 PEDAGOGY: CRITICAL APPROACHES TO TEACHING LITERATURE, LANGUAGE, COMPOSITION, & CULTURE 319, 340 (2012)).

¹⁰ *Id.*

This Article is my humble attempt to grapple with these questions. It is thematically situated in the realm of Law & Popular Culture, and Law & Literature,¹¹ and it joins the chorus of legal writing scholars who have examined how legal education replicates race, class, and gender norms.¹² I use the musical *Wicked*¹³ as a contemporary framework to underscore the limitations of IRAC and simultaneously highlight the depth of the Analytical Framework.¹⁴

A few structural considerations will be helpful on this literary and theoretical journey. First, the broader conversation is situated within identity perfor-

¹¹ See James R. Elkins, *Popular Culture, Legal Films, and Legal Film Critics*, 40 LOY. L.A. L. REV. 745, 746 (2007) (arguing that popular culture about the law is wildly popular in America, and although popular culture “teach[es] Americans about the civil justice system,” it is sometimes “at variance . . . with the ‘real world’” and can impose change on the legal system, such as influencing jurors); Michael Asimow, *Popular Culture and the Adversary System*, 40 LOY. L.A. L. REV. 653, 667–68 (2007) (maintaining that America’s support for adversarialism is due to and enforced by popular culture such as media coverage of celebrity trials, which mirror sporting events because they play on primitive tendencies). See generally JENNI RAMONE, *POSTCOLONIAL THEORIES* (2011) (reviewing postcolonial literature and underlying theories by examining the historical link between commerce, colonization, and cultural representation); JEAN RHYS, *WIDE SARGASSO SEA* (1966) (offering a different perspective of Antoinette Cosway, the “mad wife” in *Jane Eyre*, and bringing her into full view as a woman driven to madness by a hateful and sexually driven society); ALICE RANDALL, *THE WIND DONE GONE* (2001) (offering a different perspective of *Gone with the Wind* from the viewpoint of Cynara, one of Scarlett’s slaves, who manages to escape the damage of antebellum South and demonstrates a life of love and emancipation).

¹² See Michael J. Higdon, *A Place in the Academy: Law Faculty Hiring and Socioeconomic Bias*, 87 ST. JOHN’S L. REV. 171, 173–74 (2013) (noting that “class-based discrimination is in American legal education” and focusing on class discrimination in the hiring of law professors, the “overwhelming majority of [whom] in the United States graduated from top-tier law schools”); Lucille A. Jewel, *Bourdieu and American Legal Education: How Law Schools Reproduce Social Stratification and Class Hierarchy*, 56 BUFF. L. REV. 1155, 1158 (2008) (relying on Pierre Bourdieu’s theory on class as a theoretical framework for researching issues of class in legal education, and being rightly concerned that if she “teach[es] [her] students how to master the upper-class culture of the law, there is still no guarantee that the legal profession will return the favor and accept [her] students as bona fide members”); Teri A. McMurtry-Chubb, *Toward A Disciplinary Pedagogy for Legal Education*, 1 SAVANNAH L. REV. 69, 71 (2014) (grounding her study of Writing in the Discipline, in which “writing and assimilating knowledge are linked . . . in the study of rhetoric, more specifically, discourse and genre theory”); Kathryn M. Stanchi, *Resistance Is Futile: How Legal Writing Pedagogy Contributes to the Law’s Marginalization of Outsider Voices*, 103 DICK. L. REV. 7, 11 (1998) (noting that “legal writing pedagogy may contribute to the marginalization of certain groups by focusing on audience and socializing them into the culture and language of law”); Melissa H. Weresh, *Stargate: Malleability as a Threshold Concept in Legal Education*, 63 J. LEGAL EDUC. 689, 690 (2014) (arguing that malleability of the law is a threshold concept to be mastered in the first-year curriculum because it “provides a beneficial lens to the ultimate educational objective of teaching students to think like a lawyer”); Lucy Jewel, *Does the Reasonable Man Have Obsessive Compulsive Disorder?*, 54 WAKE FOREST L. REV. 1049, 1050, 1056 (2019) (probing the limits of Western traditional rhetoric and its “use of rigid categories, de-contextualized syllogisms, unforgiving dichotomies” through an examination of the reasonable man standard as a construct for approved legal conduct).

¹³ References to *The Wizard of Oz* and *Wicked* are from the movie/musicals, not the book.

¹⁴ I capitalize Analytical Framework throughout as an intentional choice to personify its identity as a character.

mance discourse to make visible parallels between legal analysis and human conditions. Briefly, identity performance describes the way one acts out or presents the various characteristics of themselves in interactions with others.¹⁵ Second, this Article is arranged parallel to Act I and Act II of the musical *Wicked*. (If you have not seen *Wicked*, sorry, there are many spoiler alerts). Third, I align the following pairs: The Good Witch (Glinda) with IRAC (Issue-Rule-Application-Conclusion), and the Wicked Witch of the West (Elphaba) with the Analytical Framework. Finally, I use the phenomenology method—a common framework for qualitative research—to reveal the untold story of the Analytical Framework, in her own words.

Also, two definitions bear mentioning: phenomenology and analytical frameworks. Phenomenology captures the lived experiences of its subjects. This “study of a human phenomenon . . . enables the researcher to explore the phenomena as [they] manifest themselves in human consciousness.”¹⁶ It is an analytical approach that is best used to explore the “rich detail of the essence of people’s experiences,” particularly where there is minimal in-depth data, as it attempts to understand how participants, themselves, make sense of their experiences.¹⁷ In other words, this method lets the subject tell its own story. Driven by the human consciousness, this approach casts off presuppositions and judgments, and has long since been a beacon of hope for marginalized voices.¹⁸ Most relevant here, this approach invites an exploration of the dynamic human character, an approach that I believe is sadly void in the legal profession.¹⁹

“Analytical frameworks” serve as a model or placeholder term for various lenses or approaches to the process of legal analysis. They can bridge the gap between various disciplines and the law and hopefully prevent a one-sided interpretation or analytical lens on a particular issue. In this work, I define “Analytical Frameworks” as consciously²⁰ using legal analysis as a means to struc-

¹⁵ See Culver, *Conscious Identity Performance*, *supra* note 4, at 579.

¹⁶ ELIZABETH A. PETERSON, *AFRICAN AMERICAN WOMEN: A STUDY OF WILL AND SUCCESS* 23, 30 (1992) (using phenomenology in the study of the human will in African American women in efforts to “stud[y] . . . it [as the will] emerges in the consciousness of [the] individual human being[.]”); *see also* CAROL GRBICH, *QUALITATIVE DATA ANALYSIS: AN INTRODUCTION* 93 (Katie Metzler ed., 2d ed. 2013) (calling phenomenology “the science of the essence of consciousness” that focuses on “first-person experiences and the trait of intentionality . . . seen as the means by which an established world of objects or an established way of seeing is brought into being”).

¹⁷ GRBICH, *supra* note 16, at 92.

¹⁸ See PETERSON, *supra* note 16, at 23, 24.

¹⁹ This sentiment rings throughout this Article.

²⁰ In some respects, the various iterations of IRAC are comparable to terms used in identity discourse: covering, passing, and comforting, to name a few. The underlying presumption being that you will assimilate; the only question is how. Thus, I use this term “conscious” to signal the need to offer novice legal writers with analytical alternatives to rote reliance on IRAC—a position I believe The Rhetorical Profile provides them with. *See generally* Culver, *Conscious Identity Performance*, *supra* note 4 (relying on interdisciplinary tools to empower attorneys and law students from traditionally marginalized groups to perform their identities in a way that limits or avoids internalizing insider stereotypes to their detriment).

ture one's thinking about the law in an effective manner. The engagement with the legal analysis is thoughtful, critical, and skillful—able to support a holistic, and inclusive, view of the law. Further, the breadth and depth of Analytical Frameworks can reveal the human experience behind the law, bridge cultural gaps, give voice to the voiceless, dismantle power, and make the law accessible, even to those who exist at the margins of our society.²¹

My thesis is twofold: First, that IRAC (i.e., Glinda the Good Witch)—a rigid, objective, and neutral approach to legal analysis—represents a paradigm that mimics white normativity and is misleading as an indicator of success and further thwarts identity development in young law students. And second, Analytical Frameworks (i.e., the Wicked Witch of the West) offer a rich and transformative process toward legal analysis, such as issue reframing, relying on narrative and storytelling in setting forth the client's facts, identifying legal limitations in controlling jurisdictions that warrant the use of persuasive law, and reminding or reinforcing legislative intent or policy considerations. To do so, the Framework's identity must be told on its own terms. This type of transformative power simply cannot be reduced to a formula.²²

I do not suggest that the conventions in which IRAC, or related iterations, prompts law students to remember are the ethnic or assimilationist culprit. In other words, helping students to remember to rely on the law to analyze an issue is not problematic. I believe, however, that it *is* becoming problematic to even present the organization of a thoughtful and complex analytical process with "IRAC." To be frank, I believe we have far surpassed "IRAC" as only representing a *framework* of deductive analysis for novice law students. Its larger popularity and dominance inside legal education, and outside in the broader profession, demonstrates the reach of its "brand," and novice law students simply lack the experience to appreciate its limitations.

²¹ I draw upon the common definitions of "analytical"—the skilled or habitual use of analysis, and "framework"—a skeletal structure designed to support or enclose something. My analytical framework is termed "The Rhetorical Profile," which I examine in depth in a companion pedagogical piece. Leslie P. Culver, *The Rhetorical Profile* (May 22, 2019) (unpublished manuscript) (on file with author) (deriving the term "rhetorical profile" from two primary considerations: first, rhetoric, as the art and study of persuasion within the broader theme of communication; and second, the notion of flavor profiles as used by professional chefs, a once sensory analysis method for resolving taste problems and developing new foods, but more modernly used to describe the flavor of food (e.g., Unami (savory), temperature, sweet, bitter, salty, sour, texture, and spicy)). The Rhetorical Profile is not a new paradigm for effective legal writing; rather, it is a contemporary, holistic framework to situate and give a name to the *already existing* questions students should consider at each stage of legal analysis to engage consciously and confidently in critical legal analytical thinking. In this way, The Rhetorical Profile includes many analytical features that IRAC omits, as evidenced by IRAC's dizzying number of iterations.

²² In many ways, as an African American woman law professor, the framework of this Article models the broader point—that a presumably innocuous traditional scholarly framework may be deceptively steeped in a white normative standard, and the results can silence outsider voices.

Alas, the classic roadmap. The first section, Act I, compares Glinda the Good Witch with IRAC and reveals the complicated relationship between the Good Witch and the Wicked Witch of the West. I invite you to enter Act I with a critical eye toward Glinda—not personally critiquing her, but attentive toward her popularity and dominance. Here, I suggest that like Glinda, reductive paradigms—chief of which is IRAC—rest in an unearned status of privilege and dominance. That is, their seductively simple formulas lure students into a feigned legal process with a narrow eye toward an objective and neutral finish line.²³ This section also grapples with a subtle relationship between IRAC as a trope for white normativity, an affinity that magnifies the gravitas of labeling IRAC as an innocent tool.

The second section, the Interlude, is a necessary pause. My suggestion that IRAC's privilege and dominance is a trope for whiteness is a daunting and uncomfortable proposition for some. A common reflex is to dispute IRAC as simply an innocent organizational tool, nothing more. To respond, in the Interlude I parallel the defense of "IRAC as a simple tool" to the film *The Wiz*,²⁴ an oft-dubbed "black version" of *The Wizard of Oz* that was entirely constructed by white writers during the controversial Black Arts Movement, thus magnifying racial tensions between "Black" and "White" America. Of relevance, I grapple with the tension of whether a white construct is capable of fully capturing or conveying marginalized voices. More critically, if IRAC bears some resemblance to white normativity, should we question the harm in letting it be a

²³ See Stanchi, *supra* note 12, at 24, 36 (arguing traditional objective memorandum requires the "writer to approach the law through the lens of neutrality, not as an advocate for one side[.]" which can alienate outsider writers "from the substance of the law" and "widens the gap between their personal and professional voices." Further commenting that the inability to consider the audience "creates a 'fit' problem when the outsider lawyer or law student attempts to frame the issue in a way that reflects her world view."); see also 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'C'N & RHETORIC: JALWD 351, 356 (2012) ("[R]arely does a legal analysis revolve around a single major premise. Rather, an effective legal analysis usually requires synthesis of a complex web of pronouncements about the law. As a result of these complications, IRAC has been heavily criticized as incapable of capturing the nuances of legal analysis.").

²⁴ The Broadway musical was in 1974, and the film was in 1987. The focus of the Interlude is on the 1978 film version, as it fared far worse than its Broadway counterpart. Jennifer Giarrusso, *Seeking a Home: The Wiz and the Black Arts Movement*, YALE NAT'L INITIATIVE, https://teachers.yale.edu/curriculum/viewer/initiative_16.03.06_u [<https://perma.cc/CL7S-373C>] (commenting that "[c]ritics have also used the differences between the musical version and the film as a negative portrayal of black culture. '[The film] even undermines the black stage version's attempt to inculcate black consciousness into a white fable.' Al Auster called the stage version a 'cheerful piece of miscegenation' that infused elements of black history and social commentary that were 'bleached out' in the film version, leaving it 'cultureless.' He goes on to argue that this was a strategy to make the film as least black as possible because of 'the conventional industry wisdom that black audiences will go see a white film, but that white audiences won't go to see a black film'—ostensibly to attract a more diverse audience. Ultimately he credits the hiring of Lumet to this aim toward a white audience." (quoting Al Auster, *The Wiz: Review*, 9 CINEASTE 2, 41 (1978))).

necessary entry point—or access—for more complex legal analysis and Other voices?

Finally, the last section, Act II, pushes against the socially constructed wickedness by bringing the Analytical Framework to life through an elevated lens of identity formation. Through the Wicked Witch's interactions with the famed Tin Man, Scarecrow, Cowardly Lion, and the Wizard, I highlight the ability of the Analytical Framework to discern the heart of legal issues, to be a voice for the voiceless, and to dismantle power systems that contribute to outsider marginalization. IRAC, as a shortcut, fails to invite such depth. If you enter Act I with skepticism toward the privilege that the Good Witch built, you should enter Act II with curiosity toward the untold story that shaped the Wicked Witch. From a pedagogical standpoint, the Wicked Witch's story invites the question, "If not IRAC (or Glinda's version), then what?" My response? Then liberation—liberation through Analytical Frameworks that usher in critical thought and growth.

What follows is what I hope will be a wonderful journey into understanding the richness and identity formation of the Analytical Framework through the colorful narrative of the Wicked Witch of the West. As the heralded antagonist since the 1939 debut of *The Wizard of Oz*, *Wicked* explored and investigated the phenomenon known as the "Wicked Witch of the West" as "an ongoing, open-ended process of coming to feel, experience and 'conscious' *better* what we have preciously felt, experienced, and 'conscioused' *in part*."²⁵ To tell the Analytical Framework's story, however, necessitates telling the story of IRAC—for every antagonist has a protagonist. But I implore you—do not get stuck here. Please. Dominance, privilege, and normativity are often masked, subtle in their resiliency for attention, and it can be uncomfortable to truly see their presence, let alone resist their effect. But this story is about the Analytical Framework that undergirds IRAC and related paradigms, and it deserves as much to have its own richness and essence revealed—in its own words.

In the end, the audience loved *Wicked*—not because it outshined *The Wizard of Oz*—but because Broadway finally shared with the world the identity formation of the "Wicked Witch of the West." Her name is Elphaba, and she is not so wicked.

²⁵ See PETERSON, *supra* note 16, at 23 (emphasis added) (quoting SHERMAN STANAGE, ADULT EDUCATION AND PHENOMENOLOGICAL RESEARCH 93 (1987)).

ACT I: NO ONE MOURNS THE WICKED ANALYTICAL FRAMEWORK

“‘She’s troubled psychologically and she’s troubled by grief and by a lack of a sense that she even possesses a soul,’ he says adding that he wanted to pursue the themes of identity, purpose and ‘how one plants one’s green sneakers on the floor of one’s life and says, ‘I am good,’ maybe ‘I’m not so good,’ or maybe ‘I’m both.’ I think this question [faces us] every day. What are we doing that’s good and what are we doing that’s bad?’” —Wicked author Gregory Maguire²⁶

“Ding Dong! The Wicked Witch is dead.”²⁷ It is likely that every school child and aging soul knows the fate of the Wicked Witch of the West. Her fury began when a tornado, a house, a little girl with the infamous red shoes, and a dog altered the course of her family with the death of her sister, the Wicked Witch of the East. Scenes later showcase the same little girl with red shoes, and the dog, now joined by a Scarecrow, Tin Man, Cowardly Lion, yellow brick road, and a Wizard, and this time it is the Wicked Witch of the West that meets her fate. Almost from the opening scene of *The Wizard of Oz* we are primed to loathe the Wicked Witch of the West,²⁸ and our distaste for her continues through the end of the movie (and the creepy music that signals her onscreen presence does not help), so we cannot help but rejoice when the heroine Dorothy bravely throws water on the Wicked Witch of the West to send her melting away to her final fate. And given how the Wicked Witch of the West treated fair Dorothy, or so we believe, the reality of her fate is not disturbing when, over six decades later, the Citizens of Oz open *Wicked* with the musical score, “No One Mourns the Wicked.”²⁹

But “why does wickedness happen?”³⁰ they ask. This is the most probing question the Ozians (the citizens of Oz) ask of Glinda the Good Witch in Act I of *Wicked*, and it is this question that frames the musical’s intellectual and thoughtful journey. Glinda, in all her genius, replies: “That’s a good question; one that many people find confusifying. Are people born wicked, or do they have wickedness thrust upon them? After all, she had a childhood . . .”³¹

Indeed, she did have a childhood. As the audience comes to learn, the Wicked Witch of the West, Elphaba, and the Good Witch, Glinda, moved from

²⁶ Frank Rizzo, *The Evolution of ‘Wicked’ from ‘Oz’*, HARTFORD COURANT (Oct. 30, 2014, 12:28 PM), <https://www.courant.com/entertainment/stage/hc-wicked-bushnell-1102-20141102-story.html> [https://perma.cc/PW3C-524B].

²⁷ 1939 MGM *Wizard of Oz Script: Munchkinland*, WENDY’S WIZARD OF OZ, <http://www.wendyswizar.dofoz.com/script4.htm> [https://perma.cc/YSJ4-ZLRM].

²⁸ Her character is first introduced as a crabby old neighbor, Miss Gulch, who is annoyed by Dorothy’s dog, Toto, constantly coming into her garden. *Id.*

²⁹ *Wicked Script*, ALL MUSICALS, <https://www.allmusicals.com/lyrics/wicked/script.htm> [https://perma.cc/LX9X-GQR5].

³⁰ *Id.*

³¹ *Id.* (emphasis added).

enemies toward true friendship.³² After Act I opens with the Ozians singing of the Wicked Witch of the West's death, the scene quickly shifts back to Elphaba's birth, and then fast forwards a decade or two to spend a significant amount of time on her identity development through her college days at Shiz University, where she meets Glinda.³³

By analogy, I argue that the "Glinda" of good legal writing has been dominated by a highly formulaic and reductive paradigm known as IRAC (Issue-Rule-Application-Conclusion).³⁴ In many ways IRAC's formulaic method mirrors the view of legal writing at its inception. Formal legal writing training was filling a systemic gap in legal education to prepare law students for the real work of practicing law.³⁵ In other words, *Begin real lawyering: Issue-Rule-Application-Conclusion. End real lawyering.* The origin of IRAC is unknown, but regardless of its orphan roots, it has become the doting (but controversial) child of the legal academy as the dominant "friendly reminder" tool for law students in crafting an effective legal analysis.³⁶ So who is the "green-skinned freshman" of legal writing? She is the Analytical Framework, the substantive depth that undergirds IRAC, but history has not donned her a hero.

Viewing the unsung hero from a cultural awareness lens demonstrates the dangers of monolithic representations. Consider the literary works of Mary

³² Carol de Giere, *Wicked Synopsis—Wicked Songs in Context*, <http://www.musicalschwartz.com/wicked-songs.htm> [<https://perma.cc/RR8W-CEQM>] (discussing synopsis of *Wicked* during the fourth song, "What is this Feeling?").

³³ *Id.* (discussing synopsis of *Wicked* during the opening song, "No One Mourns the Wicked").

³⁴ For various variances of IRAC used by legal writing professors, see *The Value of IRAC*, 10 THE SECOND DRAFT 1, 1–4, 9 (1995) (noting such iterations as IREAC, IGPAC, CRAC).

³⁵ See Philip C. Kissam, *Lurching Towards the Millennium: The Law School, the Research University, and the Professional Reforms of Legal Education*, 60 OHIO ST. L.J. 1965, 1986 (1999) (discussing the introduction of legal writing programs as a response to two influences: "One was the Legal Realist critique of legal education, which called for 'some realism' about professional training and the provision for more comprehensive education in the activities of practicing lawyers. The second consisted of the egalitarian or democratic values of the New Deal and World War II, which suggested that more attention and resources be paid to the majority of law students who do not obtain the educational benefits of a law review experience. . . . As writing programs have developed and expanded, however, they have become subject to a host of competing purposes and competing conceptions about writing or how to implement writing, to say nothing of limited resources and the unwillingness of most full-time faculty to supervise student writing." (footnotes omitted)).

³⁶ See, e.g., Terrill Pollman, *Building A Tower of Babel or Building a Discipline? Talking About Legal Writing*, 85 MARQ. L. REV. 887, 898 (2002) ("During the period when most programs employed solely a formalist approach, legal writing teachers began creating a language to facilitate learning. The focus on the formal aspects of legal documents meant that teachers were teaching issue statements, brief answers, discussion sections, and conclusions. In particular, when teaching the discussion section of an analytical memorandum, legal writing professionals taught the conventions of organizing a formal legal analysis. The attempt to articulate a step-by-step guide to analytical organization fostered the creation of IRAC, and its variations. Some have questioned the efficacy of IRAC, suggesting that it leads students to produce formulaic responses and ultimately uninspired writing. Others find it a useful teaching tool." (footnotes omitted)).

Helen Washington and Zora Neale Hurston. Washington, in her work *The Darkened Eye Restored*, criticizes the acclaim of Black men as always representing the “fugitive slave, the fiery orator, the political activist, the abolitionist” in shaping the tradition of ALL black people.³⁷ The broader parallel to the tension between IRAC and the Analytical Framework is revealed when she writes:

How does the heroic voice and heroic image of the black woman get suppressed in a culture that depended on her heroism for its survival? . . . Our ‘ritual journeys,’ our ‘articulate voices,’ our ‘symbolic spaces’ are rarely the same as men’s. Those differences and the assumption that those differences make women inherently inferior, plus the appropriation by men of the power to define tradition, account for women’s absence from our written records.³⁸

African American male writers, privileged to access white elite education in northern colleges, obtained a status of power that made them a phenomenon, which Hurston termed “Race Champions” in her work *Art and Such*.³⁹ The work of Washington and Hurston highlight not only a complex tension between African American men and women but also “Black” people vis-à-vis “White” people regarding literature and tradition. Within the African American community, women intellectuals and activists were being dulled down to “social decorations” and literary “stepdaughter[s] who prefigure[d] and direct[ed] us to the real heirs (like Ellison and Wright)” without influence over the literary canon.⁴⁰ Equally tragic is the broader influence of African American culture on literature. By only African American men articulating a false notion of a monolithic black experience, it rendered, as Hurston remarks, “the effect of the whole period [as activities fixed] in a mold that precluded originality and denied creation in the arts.”⁴¹ If the African American man wanted to sing of morning, to sing a song of uprising and joy, the “Race Champion” reminded him that the subjects relegated to “Black” people were race and suffering.⁴² “So the same old theme, the same old phrases get done again to the detriment of art. . . . [W]hat was produced was a self-conscious document lacking in drama, analysis, characterization and the universal oneness necessary to literature.”⁴³

Both African American male writers and IRAC create a false view of inclusivity with their counterpart. For example, African American male writers

³⁷ Mary Helen Washington, “*The Darkened Eye Restored*”: Notes Toward a Literary History of Black Women, in *READING BLACK, READING FEMINIST: A CRITICAL ANTHOLOGY* 30, 32 (Henry Louis Gates, Jr. ed., 1990).

³⁸ *Id.*

³⁹ Zora Neale Hurston, *Art and Such*, in *READING BLACK, READING FEMINIST: A CRITICAL ANTHOLOGY*, *supra* note 37, at 22 (“It was so easy to become a Race Leader in those days. So few Negroes knew how to read and write that any black man who was proficient in these arts was something to be wondered at.”).

⁴⁰ Washington, *supra* note 37, at 33.

⁴¹ Hurston, *supra* note 39, at 24.

⁴² *Id.* at 23–24.

⁴³ *Id.* at 24, 26.

are improperly viewed as the monolithic voice of “Black” people, when the African American women themselves were heroines who offered a unique viewpoint on African American culture and tradition.⁴⁴ Similarly, IRAC feigns a monolithic representation of analytical depth, despite IRAC’s need for the Framework’s creativity and actual depth for survival. As a result, the more complex and inclusive analysis became the add-on, the Other.⁴⁵ Ultimately, for first-year law students, this green-skinned freshman can become quite “confusing,”⁴⁶ a burden, and ultimately wicked. A richer observation is also gleaned from Hurston’s work when she remarks that the goal of the African American male, or society’s line of least resistance for the African American male, “was not to produce literature—it was to ‘champion the Race.’”⁴⁷ Is the legal profession yearning for outsider voices, for creativity, for diverse thought and perspective in legal analysis? Or is the profession championing the replication of the same old theme, the same old phrases of a privileged and dominant, but shallow, legal analysis?

These questions are not easy to answer. But a starting place, similar to Act I of *Wicked*, is a critical exploration of IRAC (portrayed by Glinda the Good Witch). How did it obtain a privileged status? What led to its superficial rise to popularity and dominance, which inevitably resulted in the complete and merciless rejection of the Analytical Framework, i.e., the “green-skinned freshman.”⁴⁸ And as set forth as an Interlude—a necessary and relevant pause to discuss *The Wiz*—what is the cost of regarding IRAC as simply a tool, an entry point, for complex legal analysis?

⁴⁴ See Washington, *supra* note 37, at 32.

⁴⁵ I am reminded of Toni Morrison’s well-known quote: “In this country American means white. Everybody else has to hyphenate.” Toni Morrison, *Quotes*, GOODREADS, <https://www.goodreads.com/quotes/157837-in-this-country-american-means-white-everybody-else-has-to> [https://perma.cc/6XJK-Q52G]. May she rest in peace.

⁴⁶ See *supra* note 31 and accompanying text (term used by Glinda the Good Witch when asked why wickedness happens).

⁴⁷ Hurston, *supra* note 39, at 24, 26.

⁴⁸ Giere, *supra* note 32 (discussing synopsis of *Wicked* during the second song, “Dear Old Shiz”).

A. *What is This Feeling?: On IRAC's Privileged Status*

“[C]onfrontation [with privilege] will expose the ways in which Whiteness is continuously reinforced as the norm, as neutral, or ‘doxa.’ If the seemingly normal Whiteness is not questioned . . . it will continue to be the dominant, subordinating actor.”—john a. powell⁴⁹

Act I, in many respects, forces the audience to wrestle with and question the authenticity of Glinda's privilege. Her thematic stance throughout Act I is largely one of blind ignorance and self-promotion, which further magnifies Elphaba's otherness.⁵⁰ Even as their friendship grows in the latter part of Act I and into Act II, Glinda never uses her privilege to offer public support for Elphaba's cause, to offer Elphaba a platform for her own voice, nor to publicly object to the oppression that the citizens of Oz were subjecting Elphaba to. Glinda, like members of dominant groups, had the ability to avoid recognizing Elphaba's “otherness” as reality. This is inherent in privilege. But the reverse is not true for marginalized people, as Patricia Monture-Angus, a Canadian indigenous scholar, recognized in her book, *Thunder in My Soul*.⁵¹ Speaking about her experience in law school, she wrote:

The study of law for me is the study of that which is outside of myself and my community. It requires that I be expert at both the ways in which “White” people do things, as well as continuing to learn as an Aboriginal woman. In fact, my survival of the law school depends on my intimate knowledge of who and what White people are. The same does not hold true in the reverse. White people have the opportunity to fully discard my reality and this is at least one of the significant sources of my marginalization.⁵²

Broadly, in Act I we learn that one significant source of marginalization is the status and class differences between Elphaba and Glinda,⁵³ which artificial-

⁴⁹ john a. powell, *Whites Will Be Whites: The Failure to Interrogate Racial Privilege*, 34 UNIV. S.F. L. REV. 419, 426–27 (2000) (quoting Ruth Frankenberg, *Introduction: Local Whiteness*, in *DISPLACING WHITENESS: ESSAYS IN SOCIAL AND CULTURAL CRITICISM* 15–16 (Ruth Frankenberg ed., 1997)) (discussing a visibility approach used by Ruth Frankenberg).

⁵⁰ This thematic overview is my personal opinion. As background, in their formative years Glinda observes her college peers making fun of Elphaba's green skin, yet she remains more concerned about her own comfort. For example, in Act I, her focus is on obtaining a private suite in the college dorms, getting into Madam Morrible's sorcery seminar, attending the Oz Dust Ball with Fiyero, and redirecting Boq's unrequited love toward Elphaba's sister, Nessarose. In Act II, when Fiyero begins to grow concern, and interest, in Elphaba's social justice plight, Glinda's attention toward herself manifests in her becoming the public face of strength for the citizens of Oz and offering public concern for Elphaba's safety. Yet, in neither Act I nor Act II did she attempt to change the Ozians' opinion of Elphaba or use her privilege to provide public support for Elphaba's cause.

⁵¹ Cynthia Levine-Rasky, *Foreword to THE INTERSECTIONS OF WHITENESS* xi, xi–xii (Evangelia Kindinger & Mark Schmitt eds., 2019) (citing PATRICIA MONTURE-ANGUS, *THUNDER IN MY SOUL: A MOHAWK WOMAN SPEAKS* 64 (1995)).

⁵² *Id.* (quoting MONTURE-ANGUS, *supra* note 51, at 64).

⁵³ During Act I, Scene 2, which begins the return to college days, the character's name is Galinda, with an intentional and superficial emphasis on pronouncing it as “Guh--linda.” See

ly results in diametric positioning between the two—and apparently only one can be privileged. Interestingly, before they were the Wicked Witch of the West and the Good Witch, respectively, the two were college students at Shiz University.⁵⁴ In Scene four, Glinda and Elphaba are forced to share a room together, and the scene opens with both young ladies sitting on their beds writing to their respective parents about their less than excited feelings for the other.⁵⁵ During the song, “What is This Feeling?,” the other university students rally around Glinda to share in her loathing feelings toward Elphaba, without any substantial basis for praising Glinda and detesting Elphaba.⁵⁶ Having declared Elphaba to be both “a terror [and] a Tartar,” the students proclaim that Glinda is “just too good,” and that though they “don’t mean to show a bias,” Glinda is simply a “martyr,” and they are “all on [her] side!”⁵⁷ The audience can chuckle at Glinda’s false affliction as she eloquently responds that “these things are sent to try us;”⁵⁸ but the larger point, however, is to highlight the palpable conclusion that Glinda did nothing to deserve the corporate praise other than to be the physical antithesis of the now loathed Elphaba.

IRAC, like Glinda, has done nothing to deserve the popular praise from the legal academy other than to be the artificially created structural framing tool for the engaging and thoughtful Analytical Framework. Yet IRAC bathes in privilege despite the inability to cultivate critical and independent thinking, problem-solving, adaptability, creativity, and depth.⁵⁹ While it is debatable whether the broader legal academy loathes IRAC,⁶⁰ I argue that like Glinda, IRAC—in some ways also artificially—gained a privilege status that is emblematic of a normative white standard.

Wicked Script, *supra* note 29. But, in efforts to not distract or confuse the reader, I have retained the more well-known title of Glinda through both Acts I and II, except for when portions of the script are directly quoted. In those instances, Glinda is used where appropriate.

⁵⁴ Carol de Giere, *Wicked the Musical—Synopsis Without Spoilers*, <http://www.musicalschwartz.com/wicked-songs2.htm> [https://perma.cc/LD49-8KYK].

⁵⁵ See *Wicked Script*, *supra* note 29.

⁵⁶ *What Is This Feeling?*, ALL MUSICALS, <https://www.allmusicals.com/lyrics/wicked/whatisthisfeeling.htm> [https://perma.cc/YKA9-KB5N].

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ See generally the discussion of the limitations of IRAC *infra* notes 165–69 and accompanying text.

⁶⁰ See, e.g., David Ziff, *Judge Posner vs. Professor Dorf on Legal Writing*, ZIFF BLOG (Oct. 3, 2016), <https://ziffblog.wordpress.com/2016/10/03/judge-posner-vs-professor-dorf-on-legal-writing/> [https://perma.cc/A6HS-MPZ8] (highlighting Judge Posner’s criticism of IRAC/CRAC structure as “straitjackets”); *The Value of IRAC*, 10 THE SECOND DRAFT 1 (1995) (providing a special edition of the journal that contains numerous short articles from legal writing professors on the value and limitations of IRAC in the first year curriculum, such as offering a simplistic way to organize a legal analysis for novice writers, but also if relied upon too heavily, stunting law students’ ability to provide adequate analytical depth).

Understanding privilege can be foreign territory to some and unpleasant for others. While many scholars of critical white studies discuss it as a concept,⁶¹ Professor Stephanie Wildman offers two distinct features that are helpful in viewing the contours of privilege as it relates to IRAC.⁶² They include, first, “the characteristics of the privileged group define the societal norm,” and second, “privileged group members can rely on their privilege and avoid objecting to oppression.”⁶³

1. IRAC’s Characteristics and Attributes Define the Norm in Legal Writing Discourse

The normalization of privilege, as Wildman contends, rests heavily on the characteristics and attributes of the privilege group.⁶⁴ They define the standard, and “those who stand outside are the aberrant or ‘alternative.’”⁶⁵ As this section explores, IRAC’s own characteristics—scientific-like methodology, rigid framework, conclusiveness, and its reliance on a distinct professional voice that breeds objectivity and generality (or neutrality), with minimal reliance on unique human experiences—are described as norms, “as the way things are and as what is normal,”⁶⁶ in traditional legal writing pedagogy.

IRAC’s hallmark feature is arguably the almost scientific method-type model of drafting legal analysis. In the 1995 edition of *The Second Draft*, many prominent legal writing scholars discussed the various features of IRAC in *The Value of IRAC*.⁶⁷ One of the most desirable features was that it provided novice legal writers some sense of structure in drafting a legal analysis, which can be a welcome relief in a profession that often wades through shades of gray and ambiguity. For example, Professor Mary Beth Beazley commented that “IRAC helps keep the focus on the reader by encouraging writers to discuss important elements in the order that is usually most helpful to the reader.”⁶⁸ Professor Charles Calleros added that “[a]s a tentative and general approach to organization based on deductive reasoning, IRAC provides an analytic framework that

⁶¹ See, e.g., Tonnia L. Anderson, *For the Common Good: Re-inscribing White Normalcy into the American Body Politic*, in *THE INTERSECTIONS OF WHITENESS*, *supra* note 51, at 39, 42 (discussing white privilege as “confer[ing] certain benefits based upon status . . . [which] may be perceived or go unrecognized by the beneficiary”); ROBERT P. AMICO, *EXPLORING WHITE PRIVILEGE 2* (2017) (describing white privilege as a “form of domination” that “positions one person or group over another person or group”).

⁶² STEPHANIE M. WILDMAN, *PRIVILEGE REVEALED: HOW INVISIBLE PREFERENCE UNDERMINES AMERICA* 13 (1996).

⁶³ *Id.*

⁶⁴ *Id.* at 14.

⁶⁵ *Id.*

⁶⁶ *Id.* (discussing the normalization of privilege).

⁶⁷ See *The Value of IRAC*, *supra* note 60.

⁶⁸ Mary Beth Beazley, *Fire, Flood, Famine & IRAC?*, 10 *THE SECOND DRAFT* 1 (1995).

is illuminating or persuasive in most legal analyses or arguments.”⁶⁹ More recently, Professor Laura Graham, in her work, *Why-Rac? Revisiting the Traditional Paradigm for Writing About Legal Analysis*, also limits IRAC’s usefulness to a legal analysis framework.⁷⁰

Outside of the legal writing discipline IRAC’s methodical usefulness is similarly recognized. In fact, one practitioner suggested that IRAC has value beyond “merely an organizational tool.”⁷¹ He posited that “[f]aithful adherence” to its technique forces a precise discernment of the issue, and an engagement in a “mental exercise of distinguishing Rule from Application thereby crystallizing the source of dispute.”⁷² This practitioner went so far as to hale IRAC as the “key to success on law school exams, the bar exam, and a successful career in litigation.”⁷³ Similarly, Dr. H. Russell Cort, an educational psychologist, noted that:

IRAC, the lawyer’s version of the classical Aristotelian syllogism, can provide beginning students with a useful framework for organizing a legal analysis. It is seductive in its seeming simplicity, but for students just starting out it provides a model for understanding how to apply the facts to a rule and for seeing what proof can mean in a legal dispute.⁷⁴

Dr. Cort’s own suspicion toward IRAC’s simplicity is revealing, as a view that IRAC can provide a model for understanding is arguably problematic. Illustratively, IRAC no more engages students in an intimate understanding of deductive reasoning (that is, application of the law to a given set of facts), than a mere list of ingredients provides a chef with intimate knowledge toward culinary delight. IRAC simply tells students to include certain conventions, but the “how to apply” is less intuitive.

For this Article, the chief argument is that IRAC models a method of generality and objectivity, a falsely simplistic analytical process, and a removal from the human experience. But perhaps its greatest transgression is its implicit boast of an idealized professional voice. Almost from day one of law school, students are routinely and appropriately reminded of professionalism, but they are also being prodded to find or create a professional identity befitting a lawyer. And to add to this already overwhelming phenomenon that is law school, we then instruct them to find the amorphous professional voice in legal writing. At first glance, the parallel between IRAC and professional voice may not be intuitive, but to the extent novice law students seek to find or imitate a profes-

⁶⁹ Charles Calleros, *IRAC: Tentative and Flexible and Therefore Reliable*, 10 THE SECOND DRAFT 4 (1995).

⁷⁰ See generally Laura P. Graham, *Why-Rac? Revisiting the Traditional Paradigm for Writing About Legal Analysis*, 63 KAN. L. REV. 681 (2015).

⁷¹ Jeffrey Metzler, *The Importance of IRAC and Legal Writing*, 80 U. DET. MERCY L. REV. 501, 501 (2003).

⁷² *Id.* at 502.

⁷³ *Id.* at 501.

⁷⁴ H. Russell Cort, *A Nest of IRACs*, 10 THE SECOND DRAFT 5 (1995).

sional voice in their legal writing, I believe *to them* that striving toward success⁷⁵ or a state of being “lawyer-like” is legitimized through an intentional mimic of IRAC. Stated otherwise, the heavy reliance on IRAC’s reductive paradigm, with its constricting conclusiveness and tone of objectivity, is in many ways the subtle move toward the “professional voice.” The notion of the professional voice raises many concerns that feel misleading. All students most certainly enter law school with a voice, but is the claim that their voices are not professional? What makes one’s voice professional? Or perhaps more to the point, who decides the standards of this professional voice?

The connection between legal writing and voice has been extensively discussed by Professor Christopher Rideout.⁷⁶ His work on voice points toward the early work of Julius Getman whose description of the professional voice is grounded in objectivity and generality.⁷⁷ For context, Getman remarks that “[t]he great bulk of legal education is devoted to inculcating ‘professional voice.’ The magical moment at which the ‘light dawns’ and bewildered first-year students are transformed into lawyers occurs when this voice becomes the

⁷⁵ See Metzler, *supra* note 71, at 501 (“And while there is some value to IRAC as merely an organizational tool, I would like to impress upon students intending to practice law, especially litigation, that IRAC is much more than an organizational structure. IRAC is an important mental exercise that forces an author to a deeper understanding of the legal issues at stake. Understanding IRAC is indispensable for sifting through hundreds of cases to find the one that most helps your case. IRAC is the key to success on law school exams, the bar exam, and a successful career in litigation.”).

⁷⁶ See, e.g., J. Christopher Rideout, *So What’s in a Name? A Rhetorical Reading of Washington’s Sexually Violent Predators Act*, 15 U. PUGET SOUND L. REV. 781, 783 (1992) (“The question for this Article, however, is what happens once the story has been recast into another form, here that of a statute? How well do the immediacy of the details and the authorial voice of the story lend themselves to the generalized and categorizing language of a rule?”); J. Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 WASH. L. REV. 35, 64 (1994) (commenting that students’ participation in the legal writing classroom is vital, most notably that through their “participation, they will also be constructing themselves, rhetorically, as lawyer-writers, a construction that entails the development of a writer’s persona and a professional voice”); J. Christopher Rideout, *Voice, Self, and Persona in Legal Writing*, 15 J. LEGAL WRITING INST. 67, 68 (2009) [hereinafter Rideout, *Voice, Self, and Persona*] (tackling the question of whether legal writing as a voice, be it personal or professional, but nonetheless that “voice belongs high on the list of things that legal writing professionals teach,” and requires one to “dig deeply into the self of a legal writer and to explore what [he] would call the persona that legal writers must construct for themselves”) (emphasis added); J. Christopher Rideout & Jill J. Ramsfield, *Legal Writing: The View from Within*, 61 MERCER L. REV. 705, 706–07 (2010) (arguing that both the identity and the voice of a legal writer are best understood as discursal); J. Christopher Rideout, *Ethos, Character, and Discursal Self in Persuasive Legal Writing*, 21 J. LEGAL WRITING INST. 19, 44 (2016) (noting the important role of voice as an “important component of a writer’s ethos”).

⁷⁷ Rideout, *Voice, Self, and Persona*, *supra* note 76, at 81 (noting that “the literature on voice in legal discourse is limited, what literature there is, not surprisingly, discusses voice in terms of professional voice”).

student's own."⁷⁸ This professional voice is the "primary goal of law school,"⁷⁹ whose features include being

objective and register[ing] at a high level of *generality*; its style tends to be formal, erudite, and 'old-fashioned'; it contains both terms of art and Latin phrases; and it *situates itself at a distance*, 'as though its user were removed from and slightly above the general concerns of humanity.' All of these features entail an erasure of the personal from what we would consider professional voice in the law.⁸⁰

To Getman's objectivity and generality, Rideout also points to the work of Professor Elizabeth Mertz, who adds argumentation to the professional voice.⁸¹ She suggests that the professional voice requires students to learn the language of argumentation, to engage with the relevant subject matter from a distance, "and [to strip] away . . . emotional and moral content."⁸² In this process, "[t]hey acquire the professional voice of a lawyer, and doing so is a powerful measure of their success at learning 'to be and think like a lawyer.'"⁸³ Both Getman and Mertz acknowledge the narrowness and limitations of this professional voice as distancing lawyers "not only from the concerns of 'ordinary people,' but also from themselves."⁸⁴ This gap between the professional and personal legal voice is extremely problematic because, as Rideout notes, it is too impersonal and largely discursal.⁸⁵ He writes,

If personal voice, or human voice, is the touchstone for voice in writing, then voice in legal writing—whether the professional voice of certain legal writings or the apparent voicelessness of others—seems problematic. Either way, there is little room for the individual writer and that writer's sense of self.⁸⁶

Moreover, according to Professor Kathryn Stanchi, the gap between the professional and personal legal voice widens "when the writer's experiences run counter to the reasoning of a case, or when the writer cannot identify with the 'rightness' of a rule or rationale, or worse, finds it repugnant to her personal values."⁸⁷ In full view of the needs of the individual writer, the reality of hidden or explicit biases in legal writing that can mute outsider voices,⁸⁸ and the fiction

⁷⁸ *Id.* (quoting Julius G. Getman, *Colloquy: Human Voice in Legal Discourse: Voices*, 66 TEX. L. REV. 577, 577 (1988)).

⁷⁹ *Id.*

⁸⁰ *Id.* (emphasis added) (quoting Getman, *supra* note 78, at 578).

⁸¹ *Id.* (citing ELIZABETH MERTZ, *THE LANGUAGE OF LAW SCHOOL: LEARNING TO "THINK LIKE A LAWYER"* 97–101 (2007)).

⁸² *Id.* at 81–82.

⁸³ *Id.* at 82 (quoting MERTZ, *supra* note 81, at 97–101).

⁸⁴ *Id.* (quoting Getman, *supra* note 78, at 578 and citing MERTZ, *supra* note 81, at 133–34).

⁸⁵ *See id.* at 70–71 (referring to discursal voice as that which "is situated within the features of its discourse type").

⁸⁶ *See id.* at 73.

⁸⁷ *See Stanchi, supra* note 12, at 37.

⁸⁸ *See id.* at 36; *see also* Lorne Sossin, *Discourse Politics: Legal Research and Writing's Search for a Pedagogy of Its Own*, 29 NEW ENG. L. REV. 883, 899 (1995) ("What both the 'plain english' movement and the 'human voice' advocates seek to reclaim is the communi-

that suggests the law is objective or neutral, Stanchi still cedes that “objectivity is a hallmark of legal language, of the professional voice.”⁸⁹

In keeping with an examination of IRAC’s privileged status, beyond its normalization of the characteristics that define (or predominantly shape) legal analysis, perhaps, as discussed in the next section, its lesser-known offense is that this privileged status permits IRAC to avoid objecting to oppression.

2. *IRAC’s Privilege Permits Avoiding Oppression*

Wildman’s second feature that helps characterize privilege is that “privileged group members can rely on their privilege and avoid objecting to oppression.”⁹⁰

cative wisdom of ordinary or everyday knowledge. In other words, to the extent that legal writing, and legal discourse generally, is removed from the sphere of ordinary understanding, whether as a matter of vocabulary or ‘voice,’ legal communication acts as a form of oppression on those marginalized outside privileged circles of class, race and gender. The same can be said of traditional attempts to disassociate legal reasoning from the sphere of emotional conviction and personal experience.” (footnotes omitted)).

⁸⁹ Stanchi, *supra* note 12, at 35.

⁹⁰ WILDMAN, *supra* note 62, at 13, 16 (recalling the story of the author’s avoiding being asked during jury selection (*voir dire*) if she spoke English, which an Asian man was asked). I can relate to Wildman’s story. In August 2019 I was returning home from a workshop where I was the guest speaker, and I had a similar privilege-awakening moment like Wildman’s. After boarding the plane and settling into my seat, the flight attendant—a “White” woman—made her way from the front of the cabin to the exit row. I was sitting a few rows behind the exit row. Having flown numerous times, I tuned out the rehearsed speech I knew was coming, where the flight attendant asks for a verbal response (preferably yes) that the exit row passengers were willing and able to help the flight crew should an emergency arise on the plane. But then I heard her say, rather loudly, “Sir, do you speak English?” She was looking at an older Asian man. I looked up, as did many around me. Similar to my student Thomas, mentioned at the start of this Article, I recognize that I can only offer an outsider view of the scene as it unfolded. My eyes briefly scanned the passengers seated in all six seats of the exit row. Three appeared ethnically Asian (the male already mentioned, and two females—one younger and one older), and the other three appeared “White.” It is quite possible that when the flight attendant asked her initial question, the Asian gentlemen stared back blankly, justifying the follow-up question as to whether he spoke English. The older Asian woman stepped in and said that he did not speak English, and the flight attendant proceeded to have a conversation with the older Asian woman, again, very loudly, stating that “he would need to move” because he needed to “understand her” if he was going to sit in the exit row, and “he can’t understand [her] if he can’t speak English.”

The length of this conversation was likely less than a minute, but it felt like a painfully long scene in an already bad movie. I was mortified for that gentleman. With my heart racing a bit, I was trying to process why I was upset—this had nothing to do with me after all. I think I was embarrassed for him because the attendant’s increased volume was drawing unnecessary attention to him and the situation. By whatever reason she believed that he did not understand her question presented to all the passengers in the exit row; why did she not simply kneel down or lean in a bit further to address him more personally? I also wondered why she asked him if he spoke English? She could have said, “Sir, did you hear me? Or “Sir, did you understand my question?” As I think about Wildman’s jury story, I can certainly recognize that I too benefited from a privilege on that plane as a United States citizen. No, I was not sitting in the exit row on that particular flight, but, even as a member of a marginal-

Merriam-Webster defines oppression as an “unjust or cruel exercise of authority or power” or “something that oppresses especially in being an unjust or excessive exercise of power.”⁹¹ I am cautious that the use of the term “oppression” in this space, as bearing a relationship to IRAC, could for some diminish the gravity of that term as it has been used historically for the mistreatment of disadvantaged groups. Without implying or applying the full historical weight of the term oppression to a legal analysis paradigm, this discussion relies on the work of Paulo Freire, who, in *Pedagogy of the Oppressed*, offers a rich dialogue of oppression through an educational lens. Viewing pedagogy more as philosophy than as teaching, he maintains that “oppression and its causes [are] objects of reflection by the oppressed,” and that the oppressed must be engaged “in the struggle for their liberation[;]” they must take part in “the incessant struggle to regain their humanity.”⁹²

IRAC’s contribution to the struggle for marginalized or oppressed voices is distinct but harmonious with legal writing pedagogy. This Article recognizes the scholarship that discusses legal writing pedagogy as contributing to the muting of outsider voices, vying instead for more critical theory and social justice frameworks to be woven into the fabric of traditional legal writing courses.⁹³ That is, in many ways the characteristics of IRAC described above—

ized group, I have never been asked—on a flight or in any other circumstance—if I “speak English.” If someone was not sure that I heard them, they would either ask if I heard them, automatically repeat their question, or ask if I am even listening. But never, do I speak English.

I thought about writing an email to the airline and notifying a manager about this incident. But similar to Wildman’s ‘thought in her head’ that did not materialize out of her mouth, I kept silent and went on about my business of getting home after a long day of traveling. Moreover, I cannot posit if this man, or his Asian companions, felt oppressed, to the extent oppression is defined as prolonged unjust treatment. It is not uncommon, however, for members of the Asian ethnic group to be asked if they speak English. See, e.g., Connie Zhou, *The Asian-American Awakening: That Moment When You Realize You’re Not White*, HUFFPOST (June 2, 2017) https://www.huffpost.com/entry/the-asian-american-awakening-that-moment-when-you_b_59307537e4b042ffa289e880 [<https://perma.cc/CL2Y-JJKW>] (recounting her experience as an Ohio-born English speaking five-year-old that had to switch schools to be placed in a school that had an ESL program, commenting that “[i]t wasn’t until later in life I tried to analyze the situation and came to this conclusion: I was put in that program for one reason, I was a shy Asian girl and everyone jumped to the conclusion that I couldn’t speak English.” (emphasis omitted)).

⁹¹ *Oppression*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/oppression> [<https://perma.cc/Q7DU-X8WK>].

⁹² PAULO FREIRE, *PEDAGOGY OF THE OPPRESSED* 48, 53–54 (Myra Ramos trans., 30th Anniversary ed. 2005) (“The pedagogy of the oppressed, which is the pedagogy of people engaged in the fight for their own liberation, has its roots [in Lukacs warning to the revolutionary party]. And those who recognize, or begin to recognize, themselves as oppressed must be among the developers of this pedagogy. No pedagogy which is truly liberating can remain distant from the oppressed by treating them as unfortunates and by presenting for their emulation models from among the oppressors. The oppressed must be their own example in the struggle for their redemption.”).

⁹³ See, e.g., Sossin, *supra* note 88, at 901 (rejecting the “one-dimensional” fashion that legal writing is normally taught, and advocating for “a pedagogy of LRW capable of mandating

formulaic, objective, and general—broadly reflect the ways in which legal writing pedagogy has been described. For example, Lorne Sossin views legal writing as “historically . . . taught in a one-dimensional fashion, conveying only a singular and status-quo oriented vision of legal communication;”⁹⁴ Stanchi maintains it ignores “certain unique and valuable voices, cultures and concepts in law, and ensuring that law remains a language of power and privilege;”⁹⁵ and Brook Baker remarks that “[l]egal education, including legal writing, can be criticized for presenting a monocultural, monochromatic, and overly doctrinal view of the world.”⁹⁶ What this Article does is narrow that broader pedagogical conversation by focusing on a critical stage in the development of the novice legal writer—the process of engaging in legal analysis.

As has been stated previously, but bears reemphasis, this Article does not contend that the analytical conventions that the IRAC paradigm represents are problematic. That the law must be used to resolve a legal issue in view of a specific set of facts is both intuitive and non-threatening. However, IRAC as a framing tool cannot be the end of the conversation (and for some professors it never enters the conversation), otherwise novice law students will mistakenly transform this paradigm into a legal *process*, without being mindful of its lack of substance. Simply put, IRAC cannot deliver an intellectual process of learning when it comes to making various decisions. Such decisions include issue framing, and from whose perspective; the rule(s) of law, including justifications, defenses; or when to yield to *stare decisis*, or push the law to change.

At best, IRAC’s specific characteristics—its objectivity and generality, and also its integral connection to legal writing that often presents a monochromatic view of the world—may serve to oppress “unique and valuable voices, cultures and concepts in law”⁹⁷ by avoiding, or altogether ignoring, objecting to oppression. IRAC’s very essence, its culture, is defined largely by being impersonal, unbiased, neutral, and keeping unique human experiences at a distance. In other

the exploration of legal discourse. The content of legal writing traditionally has advantaged particular ways of reasoning and expressing argument and, at the same time, undermined others. The same may be said of the select ‘sources of law’ to which first-year law students are sent to undertake their research. Students should be required both to research and write ‘like a lawyer’ and also to see the social, political, and economic implications of this form of discourse, and to be aware of the alternatives.”); Brook K. Baker, *Incorporating Diversity and Social Justice Issues in Legal Writing Programs*, 9 PERSPS. TEACHING LEGAL RSCH. & WRITING 51, 51 (2001) (critiquing legal writing, in part, for selecting “client problems without significant regard to the demographic diversity of our students, the diversity of their future clients, and the social justice concerns that might otherwise animate our discipline”); and the previously discussed scholars, Stanchi, *supra* note 12, and Teri A. McMurtry-Chubb, *Still Writing at the Master’s Table: Decolonizing Rhetoric for a “Woke” Legal Academy*, 21 SCHOLAR 255 (2019).

⁹⁴ Sossin, *supra* note 88, at 901.

⁹⁵ Stanchi, *supra* note 12, at 10 (“In the legal writing context, the dilemma for the teacher is whether the teacher should ‘socialize’ the student to the culture and language of law, thereby risking that the already marginalized will be further marginalized.”).

⁹⁶ Baker, *supra* note 93, at 51.

⁹⁷ Stanchi, *supra* note 12, at 10.

words, it not only avoids objecting to oppression, it often does not see it. This blindness, in accord with feminists' communication theory and Freire's work, is the reality of insider or dominant positioning; it is the fruit born of privilege.⁹⁸ Certainly objectivity is not without some usefulness. As Freire remarks, "the denial of objectivity in analysis or action, result[s] in a subjectivism which leads to solipsistic [or self] positions, denies action itself by denying objective reality."⁹⁹

To the extent, however that IRAC rests on its objectivity as an oppression exemption, a free pass to oppress, Freire's work challenges any presumption that objectivity alone can ever transform reality. To demand such of objectivity is to "divert the recognition of oppression into patient waiting for oppression to disappear by itself . . ."¹⁰⁰ It is intuitive that to avoid objecting to oppression certainly does not eliminate it. And in keeping with this Article's identity development framework, according to Freire, we cannot "dismiss the role of subjectivity in the struggle to change structures."¹⁰¹ The need for the voice of the oppressed, i.e., within the dimensions of the Analytical Framework, is not lost, it must contribute to its own liberating pedagogy.¹⁰² But the point underscored here, for IRAC, is that while its objective nature may permit IRAC from truly seeing or intentionally providing room to voice oppression, there is feigned liberation in that existence. I believe Wildman's jury story attests to this.¹⁰³ Liberation might indicate that Wildman was set free from thinking about the ethnic backstory of that Asian-American juror when asked if he spoke English. Even given her posture as a critical white studies scholar, reflection on the incident could have lasted no longer than the interaction itself. But, as Freire's theory maintains, there is value, a need, for that which is objective to be impacted by the subjective—for the oppressor to feel the weight and impact of the oppressed. He writes:

To deny the importance of subjectivity in the process of transforming the world and history is naïve and simplistic. It is to admit the impossible: a world without people. This objectivistic position is as ingenuous as that of subjectivism, which

⁹⁸ See Culver, *Conscious Identity Performance*, *supra* note 4, at 591–92 (discussing insider viewpoint as unable to see outsider status).

⁹⁹ FREIRE, *supra* note 92, at 50 (noting also that "[t]he separation of objectivity from subjectivity, the denial of the latter when analyzing reality or acting upon it, is objectivism").

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² See *id.* at 48 ("The central problem is this: How can the oppressed, as divided, unauthentic beings, participate in developing the pedagogy of their liberation? Only as they discover themselves to be 'hosts' of the oppressor can they contribute to the midwifery of their liberating pedagogy. As long as they live in the duality in which to be is to be like, and to be like is to be like the oppressor, this contribution is impossible. The pedagogy of the oppressed is an instrument for their critical discovery that both they and their oppressors are manifestations of dehumanization." (emphasis omitted)).

¹⁰³ See WILDMAN, *supra* note 62, at 16.

postulates people without a world. World and human beings do not exist apart from each other, they exist in constant interaction.¹⁰⁴

The co-dependency between the objective and subjective, as a means to overcome oppression, is a liberating thought. Sadly, IRAC has found security under the banner of privilege. Its blind spot, however, particularly for novice law students, is both the lack of awareness and confidence to include the necessary weight of subjective thought. We proclaim as law schools to train students in the art of critical thinking, in rhetoric, policy, social justice awareness—to come into our doors, our halls, our classrooms and transform the world through the legal system. Yet we hand them a tool that truncates supposed intellectual engagement down to a shallow formula and remarkably wonder why they view legal writing as foreign, inauthentic, and void of lived human experiences. In short, IRAC's very presence is a legal writing identity crisis. "No pedagogy which is truly liberating can remain distant from the oppressed by treating them as unfortunates and by presenting for their emulation models from among the oppressors."¹⁰⁵

3. *IRAC's Privilege and Its Correlation to Whiteness*

"Whiteness is, paradoxically, both full of power and empty of substantive meaning. It is an illusion, a false idol, an ideology whose power will diminish only when white people stop believing it." — Matt Wray¹⁰⁶

The privileges associated with IRAC intersect with whiteness. I am intentionally speaking of whiteness as a dominant social construct, "as a resource (capital)," a social asset,¹⁰⁷ as this more appropriately highlights whiteness as being on "the dominant side of the power system."¹⁰⁸ Borrowing a critical

¹⁰⁴ FREIRE, *supra* note 92, at 50; see Teresa Bruce, *The Empathy Principle*, 6 L. & SEXUALITY 109, 120 (1996) (describing jurisprudence based in empathy based on the work of Derrick Bell and his "use of allegory [to] demonstrate[] the empathy principle in action. His stories communicate a powerful and compelling vision of racial oppression, engendering empathy in the reader in a way that dry statistics and traditional legal writing can not. Many white people will not, for example, understand 'the horrified feelings of the subjects of . . . statistics' on slavery and black unemployment unless their empathetic capacities are stimulated. Only empathy can cause them to affirmatively demand pay equity, educational fortification, adequate welfare systems, aggressive affirmative action programs, and so on. Intellectual understanding alone will not suffice. A jurisprudence based in empathy would thus adopt many of Professor Bell's arguments; it would attack white-skin privilege just as it would attack a system male entitlement." (quoting DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* 148 (1992))).

¹⁰⁵ FREIRE, *supra* note 92, at 53–54.

¹⁰⁶ Matt Wray, *A Typology of White People in America*, in *THE INTERSECTIONS OF WHITENESS*, *supra* note 51, at 63.

¹⁰⁷ See, e.g., Anderson, *supra* note 61, at 40; Wray, *supra* note 106, at 65 (contending that "the concept of white skin privilege" has been overgeneralized, that "[i]t is not a constant. It is a variable.").

¹⁰⁸ WILDMAN, *supra* note 62, at 14–15 (discussing examples such as legacy admissions at elite colleges).

whiteness studies lens is useful in examining the subtlety of this masked affiliation between IRAC's privileged status—namely an objective methodology and ability to avoid oppression—and whiteness. In other words, the characteristics and attributes of IRAC “codif[y] the normalcy of whiteness,” by “rhetorically legitimizing” them through terms such as normal, natural, and right.¹⁰⁹ The relevance in this examination is to avoid unknowingly replicating white normativity that already exists in a profession aching for diversity.¹¹⁰

I approach this section in three parts. First, a brief overview of white normativity borrowing tenets from race and ethnicity discourse, how white normativity manifests in legal education, and finally how I perceive its materialization into legal writing pedagogy.

First, understanding white normativity is a necessary starting point, particularly for those unfamiliar with this term. A brief review of legal scholarship on understanding white normativity largely credits the starting place to sociologist Peggy McIntosh, who in the late 1980s began writing about “white privilege.”¹¹¹ Stemming from her work with women's studies, where she frequently observed that many men were unwilling to acknowledge their male privilege, she considered the ways in which her own skin color put her at an advantage over her colleagues of color, noting that “[w]hite privilege is like an invisible weightless knapsack of special provisions, maps, passports, codebooks, visas, clothes, tools and blank checks.”¹¹² When working from a “base of unacknowledged privilege,” there is little relevance in whether white people see them-

¹⁰⁹ See, e.g., Anderson, *supra* note 61, at 32 (discussing Trump's 2016 GOP Platform as codifying the normalcy of whiteness through its use of terms such as “God's Law,” “Law of Nature,” and “Nature's God” despite the Platform's intentional use of colorblind language).

¹¹⁰ Compare AM. BAR ASS'N, ABA PROFILE OF THE LEGAL PROFESSION 2020, at 32–34 (2020), <https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf> [<https://perma.cc/47ZF-4KRN>] (“86% of all lawyers were non-Hispanic whites” (compared to 60% of U.S. residents identifying as non-Hispanic whites in 2019), and the percentage of female lawyers is 37%) with *QuickFacts: People*, U.S. CENSUS BUREAU (2019), <https://www.census.gov/quickfacts/fact/table/US/PST045219> [<https://perma.cc/3SWH-BFWC>] (76.3% of the U.S. population is White, while 50.8% is made up of women) and Laura Bagby, *ABA Profile of the Legal Profession: Diversity and Well-Being*, 2CIVILITY (Aug. 13, 2020) <https://www.2civility.org/aba-profile-of-the-legal-profession-diversity-and-well-being/> [<https://perma.cc/3TQL-WDPM>] (White men and women are still “overrepresented in the legal profession compared with their presence in the overall U.S. population. . . . While the percentage of female lawyers has increased slowly over the past decade (31% in 2010 vs. 37% in 2020), recent gains among people of color are minimal. Just 5% of all lawyers are Black, the same percentage as 10 years ago, while 13.4% of the U.S. population is Black. Comparably, 5% of all lawyers are Hispanic, up from 4% a decade earlier, although 18.5% of the U.S. population is Hispanic. Two percent of all lawyers are Asian, up only 0.4% from 10 years ago, while almost 6% of the U.S. population is Asian).

¹¹¹ PEGGY MCINTOSH, *WHITE PRIVILEGE: UNPACKING THE INVISIBLE KNAPSACK* (1989), https://nationalseedproject.org/images/documents/Knapsack_plus_Notes-Peggy_McIntosh.pdf [<https://perma.cc/X2CY-5VL9>].

¹¹² *Id.* (“I think whites are carefully taught not to recognize white privilege, as males are taught not to recognize male privilege.”).

selves as oppressive, because they have been “conditioned into oblivion” about the existence of white privilege.¹¹³

While there are many ethnicity scholars that rely on white normativity as a starting point for advancing change, very few offer a definition of its characteristics. Robert Westley’s early work on white normativity is frequently referenced in legal scholarship. He maintains that:

Whiteness is a norm that both transcends racial categorization and is recognized as a racial category analogous to others. . . . This ability of whiteness to function both as a norm and as a racial signifier means that the same category can be made to operate both as a category of subordination and dominance at the same time; if not practically, then at least doctrinally.¹¹⁴

Whiteness as a transcending norm reverberates in scholarship that considers the law pertaining to white spaces. Professor Christine Zuni Cruz, for example, uses the law of white spaces as a reason to “bring issues of race and color into the institution, the legal institution, and to put them on the table for students to think about in respect to how race and culture fit into lawyering across both.”¹¹⁵ She draws on the earlier work of Peter Goodrich and Linda G. Mills, *The Law of White Spaces: Race, Culture, and Legal Education*,¹¹⁶ who wrote:

The law of white spaces is the object of white studies. It addresses whiteness as color. The relationships within the predominantly white spaces of the law school are thus to be understood as the expression of the conditions of possibility of exclusionary practices The law of white spaces is one of nonrecognition, silence, or denial.¹¹⁷

¹¹³ *Id.*

¹¹⁴ Robert Westley, *Reparations and Symbiosis: Reclaiming the Remedial Focus*, 71 UMKC L. REV. 419, 427–28 (2002). For earlier discussions from Robert Westley, see the often cited work, Robert Westley, *White Normativity and the Racial Rhetoric of Equal Protection*, in EXISTENCE IN BLACK: AN ANTHOLOGY OF BLACK EXISTENTIAL PHILOSOPHY 92 (Lewis R. Gordon ed., 1997); Robert Westley, *Lat Crit Theory and the Problematics of Internal/External Oppression: A Comparison of Forms of Oppression and Inter-Group/IntraGroup Solidarity*, 53 U. MIA. L. REV. 761, 763 (1999) (“The belief that to be light or white is intrinsically and aesthetically better than to be dark or black is a dynamic that reflects white normativity and leads to internalized oppression within communities of color.”); see also RICHARD DELGADO & JEAN STEFANCIC, CRITICAL RACE THEORY: AN INTRODUCTION 76 (2001) (“Whiteness is also normative, maybe even a kind of property. It sets the standard. Other groups, such as Indians, Latinos, Asian Americans, and African Americans, are described as *nonwhite*. That is, they are defined in terms of or in opposition to whiteness—that which they are not.”).

¹¹⁵ Margaret Montoya & Christine Zuni Cruz, *Narrative Braids: Performing Racial Literacy*, 33 AM. INDIAN L. REV. 153, 170 (2009).

¹¹⁶ Peter Goodrich & Linda G. Mills, *The Law of White Spaces: Race, Culture, and Legal Education*, 51 J. LEGAL EDUC. 15 (2001).

¹¹⁷ Montoya & Zuni Cruz, *supra* note 115 (quoting Goodrich & Mills, *supra* note 116, at 16).

Zuni Cruz adds that the law of white spaces is the denial of the “introduction of race and color” within the dominant spaces of society—an “unspoken code.”¹¹⁸

In the following decades the narrative of white normativity has evolved to a universal, social idea that falsely perpetuates whiteness as the absence of an ethnic identity. For example, Professor Cheryl Harris rejects the notion that “white normativity—the idea that white spaces (and for that matter white people) are unmarked by race[; rather] there is no domain where race is not present.”¹¹⁹ Relying on Westley’s work, Professor Imani Perry comments that “[w]hite normativity persists, rearticulated as a social ideal of colorblindness and equality of opportunity. Moreover, because of the persistence of even racialized white normativity, state racial policy, under the banner of colorblindness and equality of opportunity, can now be formulated without appearing to be racial at all.”¹²⁰ Professor Frank Rudy Cooper defines white normativity as that which is “deemed universal” because it “comports with the norms of upper middle-class white culture.”¹²¹ And not only is the myth of race as distinct from whiteness advanced, but that which is privileged (lack of cultural and social deficiencies) is normal, normal is white, and white is American.¹²²

¹¹⁸ *Id.* (citing Goodrich & Mills, *supra* note 116). See also Margaret E. Montoya, *Máscaras y Trenzas: Reflexiones Un Proyecto de Identidad y Análisis a Través de Veinte Años*, 32 CHICANA/O-LATINA/O L. REV. 7, 8 (2014) (“The voices of the Latina poets in the epigrams echo my personal voice in the stories. Similarly, my professional voice in the expository text echoes the voices of predominantly Latina/o social scientists, linguists, and other scholars in the footnotes. The use of Spanish and the Latina/o voices expose and disrupt the hegemony of the White space of the legal academy. Here, ‘White’ encompasses not only the racially dominant group, the dominant cultural norms of the law school classroom and legal discourse, including law journals, but also the whiteness of the blank page that entices the writer. My intent is to change the White space of classroom and the journal into multicultural, cross-racial, and multilingual canvasses.” (footnote omitted)).

¹¹⁹ Cheryl I. Harris, *Mining in Hard Ground*, 116 HARV. L. REV. 2487, 2535 (2003) (reviewing LANI GUINIER & GERALD TORRES, *THE MINER’S CANARY* (2002)).

¹²⁰ Imani Perry, *Occupying the Universal, Embodying the Subject*, 17 L. & LITERATURE 97, 122 (2005) (quoting Westley, *White Normativity and the Rhetoric of Equal Protection*, *supra* note 114, at 92).

¹²¹ Frank Rudy Cooper, *Masculinities, Post-Racialism and the Gates Controversy: The False Equivalence Between Officer and Civilian*, 11 NEV. L.J. 1, 36 (2010).

¹²² See William M. Wiecek, *Structural Racism and the Law in America Today: An Introduction*, 100 KY. L.J. 1, 11, 13 (2012) (“White normativity enhances the veneer of neutrality, because whites believe that their life trajectories and their access to opportunity are the norm and therefore are actually shared equally by everyone in society.”); Vinay Harpalani, *DesiCrit: Theorizing the Racial Ambiguity of South Asian Americans*, 69 N.Y.U. ANN. SURV. AM. L. 77, 169 (2013) (“This connection has led some observers to charge that South Asian and other youth who engage hip hop are ‘trying to be black.’ Professor Sharma contends that such accusations are rooted in a notion of white normativity, which equates ‘American’ with ‘White.’ These accusations also underscore the continuing significance of the black-white paradigm of race in America—even for individuals who are not classified or identified as black or white.” (quoting Raesham Chopra Nijhon, *Making Brown Like Dat: South Asians and Hip Hop*, in DESI RAP: HIP HOP AND SOUTH ASIAN AMERICA 79, 97 (Ajay Nair & Murali Balaji eds., 2008))).

More recent definitions are offered by Professors Michael Morris and Jasmine Gonzales Rose, both of whom also connect whiteness to normality. Morris in his work, *Standard White: Dismantling White Normativity*,¹²³ reviews Professor Ian Haney Lopez' book, *White by Law*.¹²⁴ In broadly defining white normativity, Morris summarizes its basic principles as:

[W]hite people are people, and the members of other racial groups are people to the extent they resemble white people. While easily intertwined with overt discrimination or racial animus, white normativity operates more subtly. Whiteness defines the normal or accepted range of conduct and characteristics, and all other racial categories are contrasted with whiteness as deviations from the norm. As a result, whiteness sits at the center of racial categorization. White normativity functions to make whites "standard" or "typical" but not always explicitly superior.¹²⁵

Similarly, Gonzales Rose, in *Toward a Critical Race Theory of Evidence*,¹²⁶ examines white privilege in the law of evidence, focusing in part on "how white norms and white transparency play a role in admissibility determinations."¹²⁷ Of relevance, she notes,

White normativity is the implicit belief that white ideas, practices, and experiences are inherently normal, natural, and right. . . . The imposition of white norms is a form of implicit bias which differs from traditional discrimination law's fixation with race-based animosity and impetus. White normativity and transparency inflict as much damage as overt discrimination and are even more pervasive and difficult to remedy under our current jurisprudence.¹²⁸

Next, if we are willing to accept (or at least consider) white normativity as an implicit *social* belief, it is not strenuous to suggest that this belief permeates the legal profession, one of largest and oldest professions, and its preceding legal education. To this point, Professor Teri McMurtry-Chubb argues that white privilege and white normativity is perpetuated by and manifest through the objectivity in the legal curriculum. In her work, *Still Writing at the Master's Table*, she exposes popularity of Christopher Langdell's traditional case method

¹²³ Michael Morris, *Standard White: Dismantling White Normativity*, 104 CALIF. L. REV. 949 (2016).

¹²⁴ *Id.* at 949. ("Standard White reviews WHITE BY LAW by Ian Haney López and examines the content and construction of whiteness as a racial category.").

¹²⁵ *Id.* at 952; see also Richard Delgado & Jean Stefancic, *A New Southern Strategy of Multigroup Oppression: A Response to Standard White by Michael Morris*, 7 CALIF. L. REV. ONLINE 49, 79 (2016) (agreeing with Morris' notion challenging a "prevailing conception of white normativity" as a "benchmark or ideal that places white habits, practices, and norms on a pedestal and then demands that minorities measure up[,] believing too that "casting aside white hegemony is considerably harder than we like to believe it is.").

¹²⁶ Jasmine B. Gonzales Rose, *Toward a Critical Race Theory of Evidence*, 101 MINN. L. REV. 2243 (2017).

¹²⁷ *Id.* at 2252.

¹²⁸ *Id.* (footnotes omitted).

study as a strategic and sanitary response to an “Industrial America” that needed “legal protections [for capitalism] to survive.”¹²⁹ She writes:

The most heavily weighted courses in Langdell’s Gilded Age curriculum remain a fixture of the 1L legal curriculum to this day: Property, Equity (Equitable Remedies), Contracts, and Torts. These courses endure as a reflection of and tools to maintain the imperialist, capitalist, white supremacist patriarchy.

Legal scholars [have] critique[d] the case method of study for its sanitary presentation of the law as unmarred by history, politics, and human experience. By elevating the study of appellate cases, narrowly drawn legal narratives framed to serve the interests of *stare decisis* (precedent) and maintain Western canons of rhetoric, legal education became prescriptive.¹³⁰

The notion of legal education as prescriptive, in other words as rigid and dogmatic, echoes the earlier work of Hurston, who was critical of the Talented Tenth Race Champions. The “Talented Tenth” is both an essay title and phrase W.E.B. Du Bois made popular in the 1903 book, *The Negro Problem*,¹³¹ a collection of several essays by well-known African American writers of the era.¹³² Du Bois used this term to describe the necessity for the top 10 percent of Black America to rise as intellectual leaders in order to counter the growing class of industrial Blacks, lest Black people remain in second-class citizenship.¹³³ Hurston’s critique of the Talented Tenth rose from their repeated silo of the uniqueness and life experiences of African American people, like that of “other

¹²⁹ McMurtry-Chubb, *supra* note 93, at 270.

¹³⁰ *Id.* at 270–71 (footnotes omitted); *see also* Duncan Kennedy, *Legal Education as Training for Hierarchy*, in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 54, 61 (David Kairys ed., 3rd ed. 1990) (criticizing the legal curriculum structure, noting that the rules in the first-year courses “are the ground rules of late-nineteenth-century laissez-faire capitalism. Teachers teach them as though they had an inner logic, as an exercise in legal reasoning, with policy.”). What resonates most from McMurtry-Chubb’s work is this picture of the legal profession, with all the rights, privileges, and protections it affords, built by a largely “White” male community as a means of self-preservation based on rapid economic growth. On the one hand, I can accept that at its inception, the legal profession never intended to bear the reality of my human experience. On the other hand, it is unsettling that in the twenty-first century this profession continues to be marked by systems and structures from its birth, which still resist bearing the reality of brown- and black-skinned experiences.

¹³¹ DuBoisopedia, *Talented Tenth*, http://scua.library.umass.edu/duboisopedia/doku.php?id=about:talented_tenth [https://perma.cc/FY38-YYRV]; W.E.B. Du Bois, *The Talented Tenth*, *TEACHING AM. HISTORY*, <https://teachingamericanhistory.org/library/document/the-talented-tenth/> [https://perma.cc/8C6S-PGV4].

¹³² W.E. Burghardt Du Bois, *The Talented Tenth*, in *BOOKER T. WASHINGTON, THE NEGRO PROBLEM* (Suzanne Shell et al eds., 2005), <https://www.gutenberg.org/files/15041/15041-h/15041-h.htm> [https://perma.cc/V7CQ-VQWN] (ebook produced by Project Gutenberg) (“The problem of education, then, among Negroes must first of all deal with the Talented Tenth; it is the problem of developing the Best of this race that they may guide the Mass away from the contamination and death of the Worst, in their own and other races.”).

¹³³ *See id.*; *Talented Tenth*, *BRITANNICA*, <https://www.britannica.com/topic/Talented-Tenth#ref930550> [https://perma.cc/J29W-CN5Q]. I retain Du Bois’ use of “Black” in this reference.

humans,” into the “Race problem.”¹³⁴ The abandoned originality, the monotony of prose that reified historical boundaries, lured the “Black” man into “following in the groove of the Race champions,”¹³⁵ in the same way rigid methodology, objectivity, and neutrality have lured legal pedagogy and legal education into following in the groove of normative whiteness.

To McMurtry-Chubb’s argument that objectivity in legal education perpetuates the larger “race” problem of white normativity, we can add Professor Duncan Kennedy’s reflections on classroom tone as being defined by white, male, and middle-class. In *Legal Education as Training for Hierarchy*,¹³⁶ Kennedy argues that whiteness plays a significant role in producing hierarchy in legal education. Specifically, he argues that the “White” male professional universe of law schools becomes the cultural standard or barometer by which every outsider, from professor to student, is measured.¹³⁷ It is unlikely that differing opinions will yield problems for students, but confrontation may arise if students “refuse to adopt the highly cognitive, dominating mode of discourse that everyone identifies as lawyerlike.”¹³⁸ That is,

[s]tudents who are women or black or working class find out something important about the professional universe from the first day of class: that it is not even nominally pluralist in cultural terms. The teacher sets the tone—a white, male, middle-class tone. Students adapt. They do so partly out of fear, partly out of hope of gain, partly out of genuine admiration for their role models. But the line between adaptation to the intellectual and skills content of legal education and adaptation to the white, male, middle-class cultural style is a fine one, easily lost sight of.¹³⁹

¹³⁴ Hurston, *supra* note 39, at 22, 24 (“It was so easy to become a Race Leader in those days. So few Negroes knew how to read and write that any black man who was proficient in these arts was something to be wondered at.”).

¹³⁵ *Id.* at 24.

¹³⁶ See Kennedy, *supra* note 130, at 54.

¹³⁷ *Id.* at 69; see also Montoya, *supra* note 118, at 11 (discussing how as a Brown law professor, her “Buenos Días” greeting to her students is sometimes met with “remonstrative ‘Good Mornings[.]’ [which] . . . scornful or scolding tone and hard eyes that accompany their English greetings [, she interprets] as pushback to what [she] ha[s] to say[.]” and affirmatively declaring that she is “not stepping out of a stereotype to make White people more comfortable.” (emphasis in original)).

¹³⁸ See Kennedy, *supra* note 130, at 69.

¹³⁹ See *id.* at 69–70 (emphasis added) (discussing the hierarchical problems for non-white male law students particularly in the classroom, noting that certain disparities between how professors treat non-dominant students may easily be seen as “enforced cultural uniformity [and] oppressive, but somewhat more difficult to see it [is] as training, especially if you are aware of it and hate it. But it is training nonetheless. You will pick up mannerisms, ways of speaking, gestures, that would be ‘neutral’ if they were not emblematic of membership in the universe of the bar. You will come to expect that as a lawyer you will live in a world in which essential parts of you are not represented, or are misrepresented, and in which things you don’t like will be accepted to the point that it doesn’t occur to people that they are even controversial.”). Kennedy’s quote also raises the reality of code-switching for those in the non-dominant group, also perhaps out of fear, gain, or adaptation. See, e.g., Taylyn Washington-Harmon, *Code-Switching: What Does It Mean and Why Do People Do It?*, MSN:

Finally, legal writing pedagogy, as a critical microcosm of legal education, is susceptible to the ills of white normativity. Like Glinda's larger-than-life character, IRAC's objective methodology and ability to avoid oppression is seductively simple,¹⁴⁰ and it is the culprit that mirrors white normativity. As the prior discussion has highlighted, white normativity is in its glory when its "ideas, practices, and experiences are inherently normal, natural, and right."¹⁴¹ Scholars focused on ethnicity, both inside and outside the legal writing discipline, demonstrate the influence of whiteness in legal writing through reductive and objective paradigms and the accompanying professional voice.

To start, Stanchi's work, in a beautifully radical way, unmasks white normativity in legal writing.¹⁴² Her work exposes how white normativity can drive a wedge between marginalized groups and legal writing pedagogy based largely on legal writing's feigned objectivity. In her piece, *Resistance Is Futile: How Legal Writing Pedagogy Contributes to the Law's Marginalization of Outsider*

HEALTH (Aug. 13, 2020), <https://www.msn.com/en-us/health/wellness/code-switching-what-does-it-mean-and-why-do-people-do-it/ar-BB17VPcx> [<https://perma.cc/2ZPD-8QER>]; Vinay Harpalani, "Safe Spaces" and the Educational Benefits of Diversity, 13 DUKE J. CONST. L. & PUB. POL'Y 117, 147 & n.139 (2017) ("Minority students must adapt to majority group norms: they must learn to act, speak, and present themselves differently in majority White settings than they might in safe spaces or other non-White majority spaces" and referencing "[t]he phenomenon of 'code switching'—where minority group members employ different language dialects around White Americans than they do when with members of their own group—is also well-documented." (referencing CODESWITCHING (Carol M. Eastman ed., 1992); Charles E. DeBose, *Codeswitching: Black English and Standard English in the African American Linguistic Repertoire*, 13 J. MULTILINGUAL & MULTICULTURAL DEV. 157 (1992))).

¹⁴⁰ See Toni M. Fine, *Comments on IRAC*, 10 THE SECOND DRAFT 7, 8 (1995) ("What we as legal educators need to keep in mind when we present concepts like IRAC to our students is that such constructs are only starting points for developing the best analytic model or models for a given task. The critical focus should remain on the process of developing and executing a framework for analysis rather than on the rote application of any predetermined anachronistic method.").

¹⁴¹ Gonzales Rose, *supra* note 126, at 2252.

¹⁴² Stanchi also speaks to white normativity in professional voice. See, e.g., Stanchi, *supra* note 12, at 49–50 ("So, for example, a woman who pauses before answering is unsure, a man who pauses is thoughtful. Or, a person of color who speaks in a confident or non-conciliatory way is 'uppity,' but a white person speaking the same way is 'confident.'") (footnotes omitted). For related discussion on linguistic profiling, see Michael Erard, *Language Matters*, 5 J. L. & SOC. CHALLENGES 225, 226 (2003) (discussing the experience of Stanford University linguist John Baugh during his move to Palo Alto, California, where, having grown up with the ability to switch from Standard to Black to Chicano English based on his situation, he relied on his professional voice when looking for housing, but that "when the landlords met him in person, . . . things quickly changed;" and it was "when he spoke in Standard English[,] he set up far more appointments in predominantly white areas than when he spoke in his other dialects."); Dawn L. Smalls, *Linguistic Profiling and the Law*, 15 STAN. L. & POL'Y REV. 579, 582 (2004) (discussing John Baugh's experience and housing stories of people of color). I recognize that "white" is not a monolithic voice, as there are variants of whiteness and white voices. See generally Barbara Ellen Smith, *De-Gradations of Whiteness: Appalachia and the Complexities of Race*, 10 J. APPALACHIAN STUD. 38 (2004).

Voices,¹⁴³ Stanchi posits that although “objectivity is a hallmark of legal language,”¹⁴⁴ it is fiction to suggest that the law is either objective or neutral.¹⁴⁵ Indeed, legal writing has its own “vocabulary and register of legal language” that can mute outsider voices based on hidden or explicit biases in a supposedly neutral judicial opinion.¹⁴⁶ To this point she comments that “the foundation for legal language and reasoning is the experiences of the ‘dominant group,’ which has the luxury of terming its members’ experiences and perspectives ‘objective’ and pushing aside other experiences and perspectives as outside the norm.”¹⁴⁷ If, as Stanchi articulates, the very foundation of legal reasoning is biased toward insiders,¹⁴⁸ and IRAC functions as a “simple tool” for constructing legal analysis (which includes legal reasoning), then IRAC may blindly accommodate a biased legal vocabulary as normative.¹⁴⁹ Outsider voices are naïve to this assimilation.

Similar to Stanchi, Professor Margaret Montoya acknowledges the nexus of white normativity with good legal analysis and moves from resistance to-

¹⁴³ Stanchi, *supra* note 12, at 7, 11 (discussing the process method and the social view method, both being “built around the idea that legal writing is a way of teaching law as a language.”).

¹⁴⁴ *Id.* at 35.

¹⁴⁵ *Id.* at 36.

¹⁴⁶ *See id.* at 36, 41 (“The gap is widened further by the fiction that judicial opinions are objective and neutral, and therefore represent the writer’s professional, not personal, voice. To many outsider law students, judicial opinions seem biased in a racial, ethnic, sexist, or heterocentric way, yet legal writing and lawyering require them to use the law without considering the hidden bias. In addition, the alienation is compounded by the requirement that the conventions of legal writing require that the writer’s opinion be expressed without the use of the first-person pronoun. For outsider writers, who may already feel like their ‘I’ is not a part of the law, the banishment of the explicit ‘I’ from a document purporting to represent the writers’ opinion means that these writers are further divorced from the document and from their professional voices.” (footnote omitted)).

¹⁴⁷ *Id.* at 17, 37 (emphasis added) (discussing muted group theory as elevating the language of the dominant group, which creates and controls the primary means of communicating; thus “the only mode of expression that is heard or listened to is the dominant language.”); *see also* Culver, *Conscious Identity Performance*, *supra* note 4, at 588–90 (discussing origin of muted group theory as a useful framework for analyzing identity performance for marginalized groups); Jewel, *supra* note 12, at 1061 (discussing the reasonable man as “[w]hite/[a]nglo-[s]axon” and arguing that “reason, as it turns out, has a long history of exalting the Anglo-Saxon race as a superior race over all others.”).

¹⁴⁸ Stanchi, *supra* note 12, at 9, 55 (“But, because legal writing pedagogy reflects the biases in legal language (including legal reasoning), its effectiveness in ‘socializing’ law students comes at the price of suppressing the voices of those who have already been historically marginalized by legal language.”).

¹⁴⁹ *Id.* at 24–26 (discussing the well-known traffic-stop case of Dujon Johnson, a Black male who was represented by a white male attorney, Professor Clark Cunningham, and noting that to Mr. Johnson, the “fundamental issue in the case was how his dignity and respect were taken from him by the police officer, who treated Mr. Johnson like a surly teenager, in part because he was black and had the temerity to challenge the officer’s authority[;]” however, “[i]n the final analysis, although under traditional legal principles Mr. Johnson ‘won,’ Mr. Johnson was unhappy with the outcome because his perspective and voice were squelched by the legal framework.”).

ward challenging its very existence. In an interview where she used narrative to expose objectivity in legal discourse, she remarked that when law faculty was predominately white male “there was largely an acceptance of objectivity as a characteristic of good, legal analysis.”¹⁵⁰ But the diversification of the legal academy, then and now, growing to include more white women and people of color, “explode[s] this objectivity.”¹⁵¹ In short, a “story can be told from an objective frame” but there is also another way of telling it “that is equally legitimate[, and] [t]here is still a battle in the classroom for how things are taught”¹⁵²

There is a battle in the classroom indeed. The fight is not a visible one over preferred writing models; it is an obscure struggle, broadly, over identity formation, and more discreetly to reimagine and reshape the whole of legal analysis for novice law students. To push against the privileged characteristics and attributes of IRAC—largely driven by an objective methodology, blindness to oppression, and preferred dominant group professional voice—that replicates the subtle way in which white normativity “defin[es] the perspective from which acceptability is judged.”¹⁵³ All law students, not just those from tradi-

¹⁵⁰ Montoya & Zuni Cruz, *supra* note 115, at 161.

¹⁵¹ *Id.*

¹⁵² *Id.* (emphasis added).

¹⁵³ Morris, *supra* note 123, at 955 (2016) (“Because society treats whiteness as neutral, the benefits that accrue to whites are taken as givens. Those benefits pass almost unnoticed, because they are simply the way the system is supposed to work. Put another way, the status of whites represents how our social, political, and legal systems are meant to function—and validates that functioning—while the status of other groups represents those systems’ inevitable imperfections.”); *see also* William M. Wiecek, *supra* note 122, at 11–12 (examining structural racism and white advantage, noting not only black subordination as “one side of the coin of racism” but also the other side being “what is frequently termed ‘white privilege.’ When legal analysis ignores this issue, it reinforces what sociologists call ‘white normativity.’ Whites unthinkingly assume that their privileged situation is the norm, and that all others could experience it too, were it not for those others’ deficiencies (originally taken to be racial/biological, now assumed to be cultural and social). . . . The point here is . . . the whites’ unthinking assumption that they are ‘normal people,’ while African-Americans are something else, not ‘normal.’ White advantage offers the bonus of enabling its beneficiaries to assume that benefits accruing to them are normal as well, and thus are natural entitlements. For whites, their race is invisible, and their superordinate status is normal. Whites do not see their relatively privileged position as a built-in advantage.” (referencing work by Peggy McIntosh, *White Privilege: Unpacking the Invisible Knapsack*, in RE-VISIONING FAMILY THERAPY: RACE, CULTURE, AND GENDER IN CLINICAL PRACTICE 147, 147 (Monica McGoldrick ed., 1998); WILDMAN, *supra* note 62; LINDA FAYE WILLIAMS, THE CONSTRAINT OF RACE: LEGACIES OF WHITE SKIN PRIVILEGE IN AMERICA 2 (2003); WHITE PRIVILEGE: ESSENTIAL READINGS ON THE OTHER SIDE OF RACISM 1 (Paula S. Rothenberg ed., 2005); Stephanie M. Wildman, *The Persistence of White Privilege*, 18 WASH. U. J.L. & POL’Y 245 (2005); Westley, *supra* note 114; Kari L. Karsjens & JoAnna M. Johnson, *White Normativity and Subsequent Critical Race Deconstruction of Bioethics*, 3 AM. J. BIOETHICS 22 (2003)); DeLeith Duke Gossett, *Take Off the [Color] Blinders: How Ignoring the Hague Convention’s Subsidiarity Principle Furthers Structural Racism Against Black American Children*, 55 SANTA CLARA L. REV. 261, 283 (2015) (“As some suggest, perhaps the greatest privilege of being white is that whites are not daily confronted with their race. Yet, when the issue is

tionally marginalized groups, benefit when, as Freire's work illustrates, the objective posture is honest with the value of and need for the subjective voice.¹⁵⁴ Feigned liberation harms everyone. It is my hope that this Article will join the ranks of earlier scholars whose work has been strategic in reclaiming this space.

Despite the rich discussion about IRAC, recall that it is the necessary protagonist starting point, but it is not the destination. And whether the legal academy collectively agrees on IRAC's ethnic identity, the very passionate discussion about its presence, let alone its identity, for decades,¹⁵⁵ highlights the problem I seek to counter: its dominance and popularity. As the next section explores, IRAC has, in every sense of the word, become this popular writing formula—this noun turned verb—as the way to write like a lawyer.

B. Popular: On IRAC's Rise to Dominance

*"Whenever I see someone less fortunate than I
 (and let's face it—who isn't less fortunate than I?)
 My tender heart tends to start to bleed . . .
 I simply have to take over
 I know I know exactly what they need . . .
 Don't worry—I'm determined to succeed
 Follow my lead
 And yes, indeed
 You will be . . . Popular!"
 —Glinda the "Good Witch"¹⁵⁶*

First year law students begin law school with little to no experience on how to engage in critical thinking like many lawyers. It follows then that they arrive to their first-year courses equally unable to dole out complex legal analysis as seasoned lawyers. This lack of inherent knowledge of lawyering skills is a natural gap that *should* exist between college and law school, and, as Professor Sherri Keene observes, should also keep, in particular, legal writing professors' expectations humble.¹⁵⁷ But what faculty are less likely prepared for is stu-

ignored, it reinforces what sociologists have termed 'white normativity.' Whites begin to think that their privileged status is the norm, and that they are entitled to any benefits accruing to them under that system." (citing Barbara J. Flagg, *'Was Blind, But Now I See': White Race Consciousness and the Requirement of Discriminatory Intent*, 91 MICH. L. REV. 953, 969 (1993); other footnotes omitted)).

¹⁵⁴ See discussion of PAULO FREIRE, *supra* notes 92, 99–102, 104–05 and accompanying text.

¹⁵⁵ See, e.g., *The Value of IRAC*, *supra* note 60, at 1.

¹⁵⁶ Stephen Schwartz, *Wicked*, "Popular" Lyrics, MUSICALSCHWARTZ, <http://musicalscharz.com/wicked-lyrics-popular.htm> [https://perma.cc/BGZ6-BE2X].

¹⁵⁷ Sherri Lee Keene, *Are We There Yet? Aligning the Expectations and Realities of Gaining Competency in Legal Writing*, 53 DUQ. L. REV. 99, 108 (2015) (commenting on the expectations of law faculty who teach upper-level courses, who believe "students [should] be pre-

dents' raw and unrefined lawyering identity that is susceptible to most any spark of legitimacy.

In *Wicked*, Glinda's character embodies feigned legitimacy—or perhaps just spark. Shortly after we learn of the mutual loathing between the witches, Glinda solo's the quirky musical number “Popular,” where with every “flip flip”¹⁵⁸ of her perfectly coifed blond curls she fully embraces her unearned claim to fame. At this point in the musical, the two witches are slowly becoming secret friends, so Glinda commits to making Elphaba popular. During one of their early girl talk scenes, Glinda scoffs at the idea that “[c]elebrated heads of state or [s]pecially great communicators” somehow possess “brains or knowledge.”¹⁵⁹ To the contrary, she reveals the secret truth behind their supposed power: “They were popular! Please—It's all about popular! It's not about aptitude, It's the way you're viewed . . .”¹⁶⁰ As Elphaba watches Glinda flit about the stage, filling Elphaba's head with a vision of popularity, Glinda closes out the song with one clear stipulation: “You'll be popular, [j]ust not as quite as popular as me!”¹⁶¹

While popular, as an obvious point almost from the start, Glinda's character is also intended to be a superficial, self-centered, “goodie goodie.”¹⁶² Despite this major character flaw, however, her simplicity is quite seductive,¹⁶³ both to the on-stage cast that revere her, and to the viewing audience, who—in my six viewings of this Broadway musical—never fails to erupt with cheers and hollering at the end of her number. I posit that the seduction is certainly attributed, in part, to the magnificent casting of this character. But to the broader point of this Article, the seduction is also subtle in its cheery and unassuming delight in wondering if Elphaba will assimilate.

IRAC's own lure toward assimilation has existed for decades based on its overwhelming dominance. As previously discussed, many prominent legal

pared as they enter their second year, to engage in increasingly complex legal analysis and writing, in a variety of forms, without the need for significant formal instruction and with decreased faculty supervision.”).

¹⁵⁸ *Wicked Script, Act I, Scene 10, Popular*, ALLMUSICALS.COM, <https://www.allmusicals.com/lyrics/wicked/script.htm> [<https://perma.cc/6UGB-5TVY>].

¹⁵⁹ *Wicked, Popular Lyrics*, ALLMUSICALS.COM, <https://www.allmusicals.com/lyrics/wicked/popular.htm> [<https://perma.cc/W9A7-ZJTF>].

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² Carol de Giere, *Wicked Characters: Who's Who in Wicked the Musical and Novel*, MUSICALSCHWARTZ, <http://www.musicalschwartz.com/wicked-characters.htm> [<https://perma.cc/CJ46-UDFZ>] (“Both the novel and musical introduce Glinda as her younger self, Galinda Upland of the Upper Uplands, a blatantly self-centered young blond. Gregory Maguire disassociated her from an archetypal ‘good’ to make her a pretentious goodie goodie. The musical's writers juxtaposed the two women who were superficially ‘bad (or misfit)’ and ‘good’ but underneath were nearly the opposite (until Glinda evolves as a person).”).

¹⁶³ See Cort, *supra* note 74 and accompanying text.

writing scholars discussed the various features of IRAC circa 1995.¹⁶⁴ Despite offering a sense of structure in drafting a legal analysis, much of legal scholarship that discusses what comprises good legal writing rarely situates the conversation within a formulaic paradigm that leaves little room for thoughtful positioning and inclusion of information. In fact, for decades “the legal writing academy has recognized the limitations of IRAC, and criticisms of the paradigm have steadily mounted.”¹⁶⁵ For example, Calleros called for a tentative approach to IRAC, “because we should teach students to feel secure to depart from IRAC in any document, such as a complaint, in which they can best meet their objectives with a different framework” and for a general approach, “because students should use it only as a general framework that can be adapted to varying circumstances.”¹⁶⁶ Professor Linda Edwards eloquently categorizes the bulk of the criticisms into three categories: “(1) discomfort with using any heuristic model; (2) the perception that an IRAC format does not accommodate forms of reasoning other than rule-based reasoning; and (3) dissatisfaction with

¹⁶⁴ For a rich conversation within the legal writing community on the applicability and fragility of IRAC, see *The Value of IRAC*, *supra* note 60, at 1 (providing a special edition of the journal that contains numerous short articles from legal writing professors on the value and limitations of IRAC in the first year curriculum, such as offering a simplistic way to organize a legal analysis for novice writers, but also if relied upon to heavily, stunting law students ability to provide adequate analytical depth).

¹⁶⁵ Graham, *supra* note 70, at 681; see, e.g., Beazley, *supra* note 68, at 1 (“IRAC may not be the key to all legal analysis, but as a simple mnemonic that’s helpful to most legal writers—and most legal readers—it’s great.”); Cort, *supra* note 74, at 5, 6 (“Most students learn the basic model readily enough. But what some students do not necessarily see intuitively, and what a teacher may not teach explicitly, is that legal analysis typically involves a series of nested IRACs—IRACs within IRACs, wheels within wheels. The student may not see that the overall IRAC—the main conclusion—is based on examination of the result of each element’s IRAC. Lacking that insight, the student is likely to short circuit the scope of the necessary analysis and not understand why. The student does not see that each element of a rule calls for its own IRAC analysis.”); Jane Kent Gionfriddo, *Our Focus Should be Analysis, Not Formulas Like IRAC*, 10 THE SECOND DRAFT 2 (1995) (“Students who do use this type of formula too often follow its format without thinking enough about the process of legal analysis. They try to fit their ideas into the ‘pigeon holes’ or labels of the formula’s structure, without fully understanding why they are doing what they do or how they should come up with the necessary analysis.”); Barbara Blumenfeld, *Why IRAC Should Be IGPAC*, 10 THE SECOND DRAFT 4 (1995) (“But, whether IRAC or IGPAC is used, students must be reminded that it is not an end in itself. They must understand that their goal is to present an analysis that is legally sound and that the reader of their document can follow and understand.”); Kim Cauthorn, *Keep on “TRRACING,”* 10 THE SECOND DRAFT 5 (1995) (“My next reaction to the question posed is the recognition that, unless carefully taught, students will both misuse and abuse any method for structuring written legal analysis. In other words, as law students and later as lawyers, they will stuff every exam answer, legal memorandum discussion section, motion argument, and appellate brief argument into one giant IRAC without really understanding the paradigm’s proper function and without fully analyzing all of the legal questions presented by the problem.”).

¹⁶⁶ Calleros, *supra* note 69, at 4.

the IRAC format itself.”¹⁶⁷ Edwards then reminds the legal writing community of the limited purpose of IRAC, or any of its versions, stating that:

[t]he format is designed to help a novice writer organize the discussion of a single legal issue—that is, a single element or condition. *That’s all*. It guides the writer in stating the issue or conclusion on that element, in stating and explaining the governing law on that element, in applying that law to the facts, and in stating a conclusion.

We become frustrated with IRAC, and understandably so, when we expect it to do more than organize the discussion of a single element. Most legal questions raise issues about more than one element or condition, and the IRAC format does not provide an “umbrella” organization. It does not help the writer assemble these individual discussions of separate elements.¹⁶⁸

Most enlightening about Edwards’ statement is the awareness, perhaps obvious, that our frustration is a result of unmet expectations. Legal writing professors have the benefit of a vantage point to see the value and limitations of IRAC, enabling them to modify its structure to respond to the needs of the audience or client, or to confront larger social or policy issues.

As this Article asserts, using *Wicked* to reveal the untold story of the Analytical Framework underscores the limitations of IRAC. *The Wizard of Oz* movie alone prevented us from truly learning about the life of the Wicked Witch of the West. She was more than prematurely developed; she was truncated to shrill music and a horrible demise. What is more problematic is that *The Wizard of Oz*, intentionally, did not awaken in us a desire to even care about her. [A scary premise when we consider the voices left out of many judicial opinions and our students unwavering reliance and trust in them as objective, neutral, and holistic examinations of the law]. *Wicked* revived her. And our view not only of *Wicked*, but of *The Wizard of Oz*, was better for this prequel. In like form, when “good legal writing” is falsely reduced to formulaic paradigms, a set of skills, or “treat[ed] . . . as a singular activity,”¹⁶⁹ the students actual learning process is prematurely truncated because “most legal skills cannot be easily segregated from legal theory and doctrine but instead require attorneys to apply

¹⁶⁷ Linda H. Edwards, *IRAC Format Accomplishes the Limited Purpose It Is Designed to Achieve*, 10 THE SECOND DRAFT 7 (1995); see also Jo Anne Durako, *Evolution of IRAC: A Useful First Step*, 10 THE SECOND DRAFT 6 (1995) (noting IRAC or its iterations provides “no call for counter-analysis or consideration of policy implications . . .”); Fine, *supra* note 140, at 7 (“[T]he IRAC method of teaching legal analysis is overly simplistic and too formulaic to be an adequate approach for the wide range of projects that most students will encounter in practice. In part because tools like IRAC are introduced to students at the very beginning of their legal careers, when subtleties of the emphasis to be given to certain rules may be lost, students often come away with the mistaken notion that IRAC may be appropriately used at all times and for all purposes. Clearly it is not.”).

¹⁶⁸ Edwards, *supra* note 167, at 7 (emphasis added).

¹⁶⁹ Keene, *supra* note 157, at 103, 109–11, 128–29 (“[L]egal educators will better meet the needs of their students if they recognize that legal writing takes various forms, covers different subjects, speaks to different audiences, and serves different purposes. Students will be better served if professors acknowledge the breadth of legal writing and avoid setting expectations for them based upon a one-size-fits-all perspective.”).

their knowledge of the law to accomplish specific tasks in the course of client representation.”¹⁷⁰ This arbitrary skills/theory divide is an ache that the legal writing community has borne for years.

Even after decades of IRAC-bullying, which subjected the paradigm to a rigorous litmus test of usefulness and viability, IRAC’s dominance is present and problematic in legal education. As proof, despite the clear conclusion that this paradigm failed to prepare budding lawyers for the necessary depths and complexity of legal analysis, the resolution has not been an erasure of the term, as even Graham suggests,¹⁷¹ but a legion of add-ons that inflated an already dominant paradigm.¹⁷² For example, an additional “R” would help students remember the Rule and the rule’s Reasoning,¹⁷³ or a “long A” could remind students to not just Apply the law, but to think through counter-Analysis and policy arguments;¹⁷⁴ or, a bit more complex suggestions included appending another acronym to IRAC, such as “(QfrFR)+IRAC” in which Q = question, fr = the entire set of possibly relevant facts and rules, and FR = relevant fact(s) and rules used to formulate the I of IRAC.”¹⁷⁵ All of these iterations are valuable to the extent they reflect agreed-upon and overlapping conventions of legal analysis. But the constant of IRAC’s presence, as a base, underscores the point that after decades of deliberation over the value of IRAC as a tool in legal writ-

¹⁷⁰ Sherri Lee Keene, *One Small Step for Legal Writing, One Giant Leap for Legal Education: Making the Case for More Writing Opportunities in the “Practice-Ready” Law School Curriculum*, 65 MERCER L. REV. 467, 475 (2014) (“The current ‘practice-ready’ debate suggests that the learning of legal theory and practice are separate and distinct activities, with each needing to occupy a separate space in the law school curriculum. However, to the contrary, most legal skills cannot be easily segregated from legal theory and doctrine, but instead require attorneys to apply their knowledge of the law to accomplish specific tasks in the course of client representation.”).

¹⁷¹ Graham, *supra* note 70, at 709–10 (discussing opportunities to provide students with the tools to “talk about writing in a sophisticated and meaningful way” . . . without the necessity of agreeing upon any one paradigm, using a variety of plain-language terms that will resonate and “stick” with our students . . . This can be done easily without continually mentioning the IRAC “formula.” (quoting Terrill Pollman & Judith M. Stinson, *IRLAFARC! Surveying the Language of Legal Writing*, 56 ME. L. REV. 239, 245 (2004))). Graham further suggests that legal writing professors should focus on pre-writing to get students thinking about IRAC in a recursive as opposed to linear way, and use terms like “intellectual location,” “intellectual weight,” to help students think about the best memo structure; and “roadmap,” “landscape,” “broad governing rule,” “sub-rules,” for example, for rule development and placement, and so forth. *Id.* at 709–11.

¹⁷² See, e.g., *id.* at 712 (calling the additional letters to IRAC “an explosion of alternative acronyms.”). See generally *The Value of IRAC*, *supra* note 60 (offering several iterations of IRAC from legal writing professors across the country); Pollman, *supra* note 36, at 898 n. 51–52; Graham, *supra* note 70, at 691–92 (discussing variant iterations of IRAC); Turner, *supra* note 23, at 352, 354–55 (2012) (recognizing the “debate over the usefulness of paradigms, [Turner seeks] to liberate the core principles of effective organization without debating the merits of a particular method,” which she asserts include “rule-centered analysis, separation of discrete issues, synthesis of the law, and unity.”).

¹⁷³ See Cauthorn, *supra* note 165, at 5.

¹⁷⁴ See Durako, *supra* note 167, at 6.

¹⁷⁵ Dennis R. Honabach, “IRAC” or “(QFRFR) + IRAC”, 10 THE SECOND DRAFT 8 (1995).

ing,¹⁷⁶ all we have really done as a community is changed some of its partners, but we have not really abandoned it, and perhaps we cannot. In hindsight, perhaps the surge of IRAC iterations was a feeble attempt to lessen IRAC's power. But in adding more letters, we magnified its presence and spread its wings of dominance (and confusion) upon our students.

To this point of dominance, I briefly return to the prior sentiment of IRAC's status as embodying and perpetuating whiteness.¹⁷⁷ In the prior section some of the desirable features of IRAC were discussed, both among legal writing scholars and legal practitioners. While IRAC may, for some, have broad usefulness as a drafting tool, the literal and figurative publication of the "[i]mportance of IRAC and legal writing" raises two concerns: first, the seductive simplicity of novice law students producing effective legal analysis.¹⁷⁸ I would venture to say that any legal professor or practitioner familiar with IRAC would agree it is an acronym for *organizing* a legal argument—it simply cannot detail for novice law students the relevant content or substance that each "section" should consider. An experienced attorney is better equipped to engage in such necessary discernment. This obvious content gap leads to the second fundamental concern: its dominance. Who is the gatekeeper to prevent this seemingly innocuous organizational tool from being elevated to the key for students to "do better on [their] exams, have an easier time passing the bar, be more successful in [their] legal career[s], and [perhaps] achieve a higher state of inner peace and happiness[?]"¹⁷⁹ This is a lofty goal, even for IRAC. I cannot conceptualize a more figurative picture of its dominance.

INTERLUDE: "WHITE CONSTRUCTION OF BLACK EXPERIENCE"¹⁸⁰

This Article's suggestion of IRAC's privilege and dominance as a trope for whiteness is both daunting and uncomfortable. Other scholars who read this work often defended IRAC as "simply" a neutral tool to aid novice legal writ-

¹⁷⁶ See Graham, *supra* note 70, at 705 (commenting that IRAC was "meant [to function] primarily as an *analytic* tool," not a writing formula).

¹⁷⁷ See *supra* Act I, Section A.3.

¹⁷⁸ See generally Fine, *supra* note 140, at 7 ("Beginning law students, who are all too eager to be offered 'rules' and normative standards for across-the-board application, view IRAC as a safe harbor in a sea of indeterminate concepts, which they enthusiastically embrace."); Chris Iijima & Beth Cohen, *Reflections of IRAC*, 10 THE SECOND DRAFT 9 (1995) ("Indeed, pedagogical considerations aside, if one remembers that the two most common emotions first year law students experience are confusion and panic, IRAC's stolid accessibility may be its greatest attribute.").

¹⁷⁹ Metzler, *supra* note 71, at 503. To be clear, I express no personal judgment toward the author of this article. For starters, the article is almost two decades old, so much may have changed in his thoughts toward IRAC or general writing approach. But the greater point is that IRAC can so easily be espoused as sound legal analysis without offering a critique of its limitations. And if IRAC is the key to success, and success looks like an Ivy League background, with related career opportunities, why wouldn't any student feel compelled to "master" IRAC?.

¹⁸⁰ Giarrusso, *supra* note 24.

ers in developing legal analysis in a way that is common (or required) in the legal profession. There was little harm in letting it be an entry point for more complex legal analysis. But if IRAC is a dominant paradigm that mimics white normativity, is it possible that its ‘race’ is unmarked, invisible, and its structure essentially stands in for all legal analysis—from simple to complex, for dominant groups to Others?¹⁸¹ Further, I question whether a reductionist legal analysis that mimics whiteness can effectively help novice law students interact with and analyze the law holistically, particularly as it impacts marginalized voices or viewpoints.¹⁸² I am not convinced there is a clear Yes or No. There is, however, a diametric tension triggered between the reality that Others lack access *to*, and representation *in*, the law; and the reality that IRAC’s privilege affords blindness to oppression, and thus does not intuitively make room for the unique and valuable contribution of Others voices—a positioning that is emblematic of a discourse community structured in whiteness. The resulting analysis may feel and sound familiar, yet foreign; feel and appear relatable, yet inauthentic; and feel and purport to be transformative, yet prosaic. In short, it may look like *The Wiz*.

In between *The Wizard of Oz* in 1939, and *Wicked* in 2003, there was *The Wiz* in 1974 (Broadway musical) and 1978 (film). For this Interlude, the focus is on the 1978 film version, as it fared far worse than its Broadway counterpart.¹⁸³ The emergence of *The Wiz*, both musical and film, onto the artistic scene, particularly during a controversial Black Arts Movement,¹⁸⁴ magnified ra-

¹⁸¹ I attribute this thought of IRAC as having an unmarked ‘race’ that is silently dominating legal analysis to Devin Carbado’s work in *Colorblind Intersectionality*, where he discusses the case of Darlene Jespersen, a “White” woman who brought a sex discrimination claim against Harrah’s Casino based on the Casino’s groom policy—that all female employees wear makeup, which Jespersen refused. Devon W. Carbado, *Colorblind Intersectionality*, 38 SIGNS: J. WOMEN CULTURE & SOC’Y 811, 818–19, 821–23 (2013). Carbado argued that while the “Ninth Circuit never expressly invoke[d] race,” her racial identity was never discussed, rather the analysis ensued with Jespersen as stand in “for gender per se,” and not specifically for *white* women; that is “[h]er whiteness facilitate[d] [a] representational authority in that it [was] both juridically unmarked and juridically incorporated.” *Id.* at 822. As a point of comparison, Carbado similarly notes that Black heterosexual men are not framed in intersectional terms, as they have the potential “to stand in for ‘the race.’” *Id.* at 818.

¹⁸² I was asked by a colleague what a “Black IRAC” would look like. After we chuckled at the thought, I believe the short answer is that it does not—and should not—exist. Simply put, to the legal discourse belongs the expectation that effective and persuasive legal advocacy will rely on issue framing, governing law, and applying that law (and its related defenses and justifications) to render a conclusion in a given set of facts. A “Black version” that purports to uproot these genre conventions would do little to bridge any perceived dissonance between marginalized voices and legal writing pedagogy.

¹⁸³ See *supra* text accompanying note 26.

¹⁸⁴ *A Brief Guide to the Black Arts Movement*, POETS (Feb. 18, 2014), poets.org/text/brief-guide-black-arts-movement [https://perma.cc/SS8N-S9M2] (noting that “[b]oth the Black Power and Black Arts movements were responses to the turbulent socio-political landscape of the [civil rights movement].”).

cial tensions between “Black” and “White” America.¹⁸⁵ This tension offers a perspective that is highly relevant in the broader IRAC discussion, namely visualizing the experience of marginalized voices through a constructed white paradigm. What follows is a brief discussion first—in sections A and B—of the cultural problems and critiques *The Wiz* presented, during the Black Arts Movement, as a “Black” film constructed by white writers; and second, of IRAC’s white structure as an appropriate entry point or framing for diverse perspectives and experiences in view of the divergent opinions of *The Wiz*.

A. *The Black Arts Movement*

“We want a black poem. And a
Black World.
Let the world be a Black Poem
And Let All Black People Speak This Poem
Silently
or LOUD”

—Amiri Baraka, “Black Art”¹⁸⁶

“Sometimes referred to as ‘the artistic sister of the Black Power Movement,’ the Black Arts Movement stands as the single most controversial moment in the history of African-American literature—possibly in American literature as a whole.” —*Black Creativity: On the Cutting Edge*¹⁸⁷

The Black Arts Movement was birthed in the late 1960s and early 70s during the Civil Rights movement¹⁸⁸ to protect and honor Black Art from the grips of white interpretation or influence.¹⁸⁹ Led by Imamu Amiri Baraka, the Movement’s intent was to:

¹⁸⁵ See *supra* text accompanying note 184. For this section I retain the use of “Black” (instead of African American) and “White” in view of the thorough discussion of the Black Arts Movement and the White critic.

¹⁸⁶ Giarrusso, *supra* note 24 (quoting an excerpt from Amiri Baraka’s poem “Black Art”).

¹⁸⁷ *A Brief Guide to the Black Arts Movement*, *supra* note 184 (quoting *Black Creativity: On the Cutting Edge*, TIME (Oct. 10, 1994)).

¹⁸⁸ See *id.*; see also Rhonda Williams, *The Wiz: American Culture at Its Best*, in THE UNIVERSE OF OZ: ESSAYS ON BAUM’S SERIES AND ITS PROGENY 193 (Kevin K. Durand & Mary K. Leigh eds., 2010) (noting that the political mood of the country in the 1970s centered on Civil Rights and the equality of the races, which was an issue that Sidney Lumet wanted to address in his adaptation of the film *The Wiz*).

¹⁸⁹ See *A Brief Guide to the Black Arts Movement*, *supra* note 184 (“Sometimes criticized as misogynist, homophobic, anti-Semitic, and racially exclusive, the Black Arts movement is also credited with motivating a new generation of poets, writers, and artists. In recent years, however, many other writers—Native Americans, Latinos/as, gays and lesbians, and younger generations of African Americans, for instance—have acknowledged their debt to the Black Arts movement.”); Erik Nielson, *White Surveillance of the Black Arts*, 47 AFR. AM. REV. 161, 161 (2014); Giarrusso, *supra* note 24 (“The Black Arts Movement began in 1965, following the assassination of Malcolm X (which some call the inciting incident for the movement), and stretched until about 1975. As a corollary to the Black Power movement, the

'destroy the double consciousness—the tension that is in the souls of the black folk' . . . in order to stake a claim for a uniquely black form of artistic expression[,] . . . [which meant] purg[ing] white presence and its 'useless, dead ideas' from black art¹⁹⁰

As the human experience unfolds in Black works, Black Arts proponents insisted the message must push the work to "*do something . . . as a force for better or worse which has been someplace and is going somewhere*;"¹⁹¹ it must both acknowledge and destroy colonialism in body and in mind, liberate the Black community, and for many, do so through the "rich, figurative black speech."¹⁹² There was a general concern about whether White writers could authentically capture the black character, as Professor Catharine Stimpson notes, because "even the best of black characters created by white writers function within white contexts. They objectify white notions, values, ambitions, theatricalities, anxieties, and besetting fears."¹⁹³

More concerning than whether White writers could aptly portray Black characters was that Black Art and literature were heavily dependent on white resources, including the White critic, to survive.¹⁹⁴ The Black community,

Black Arts Movement facilitated the creation of a black voice, the creation of a home for black culture. The essence of the Black Arts Movement was a redefinition of what it meant to be a black writer and artist; where the Black Power movement was political, the Black Arts Movement was artistic. The movement served as a way for black artists to define their art separately from the white mainstream.").

¹⁹⁰ Nielson, *supra* note 189; see also *A Brief Guide to the Black Arts Movement*, *supra* note 184 ("One of the most important figures in the Black Arts movement was Amiri Baraka (formerly LeRoi Jones), who began his career among the Beat generation, living in Greenwich Village and associating with poets such as Allen Ginsberg, Charles Olson, and Gary Snyder."); STACY WOLF, *CHANGED FOR GOOD: A FEMINIST HISTORY OF THE BROADWAY MUSICAL* 93 (2011) (noting that "[r]ace consciousness and race pride also became more mainstream in the 1970s" and "[i]ncreased awareness of race found its way into popular culture").

¹⁹¹ Catharine R. Stimpson, *Black Culture/White Teacher*, 2 *CHANGE HIGHER EDUC.* 35, 38 (1970).

¹⁹² *Id.* at 36 (rejecting black speech as "the language of the ghetto, the deprived, the folk," and regarding it as "subtle, precise, vibrant. Its speaker, as much leader or performer as speaker, possesses both formal oratorical power and spontaneous wit."); see also Joseph Keller, *Black Writing and the White Critic*, 3 *NEGRO AM. LITERATURE F.* 103, 107 (1969) (discussing the "great emphasis on language one finds in black writing"); Geneva Smitherman, *Black Idiom*, 5 *NEGRO AM. LITERATURE F.* 88, 116 (1971) ("We bees bout extending the legitimacy of the Black Idiom into America and the world. The necessity of using our language as a unifying vehicle can only be understood in a political context. Language is/has been/will continue to be, if we let it, a tool of oppression. And the answer lies not in remaking our Black students in the linguistic image of the oppressor. . . . In the trend away from allegiance to this system, the clarion call is ethnic, the style revolutionary, and the language Black. (Admittedly, in the American context, this becomes a language often fused with linguistic pollutions from the white middle class, but the oratorical patterns, the speech rhythms, the tonal qualities, the underlying rhetorical strategies and the language behavior are definitely Black.)" (emphasis omitted)).

¹⁹³ Stimpson, *supra* note 191, at 37.

¹⁹⁴ See Rhett S. Jones, *Community and Commentators: Black Theatre and Its Critics*, 14 *BLACK AM. LITERATURE F.* 69, 69 (1980) ("The critic is particularly important to those in-

however, criticized the White critic as being unqualified to judge the black experience, scoffing that “whites [were] so certain that their interpretations—intellectual structures— . . . based on *their* color words were the norms.”¹⁹⁵ This notable black experience, at least to the Black community, went far beyond merely having a Black body in a play on stage or as the hero/heroine in a literary work. In many ways, Black work posed “unique statements about identity.”¹⁹⁶ The White critic, on the other hand, criticized the Black artist for not displaying a clear message, function, or role that their work needed to convey.

volved in black theatre who want to do more than entertain, who want to place theatre in the vanguard of the black struggle, and who want to use theatre to help black people cope with a racist society. [As it stands,] the majority of working-class black Americans . . . view theatre as the pastime of the middle classes, and see little on the stage that speaks to them and to their problems.”); C.W.E. Bigsby, *The White Critic in a Black World*, 6 NEGRO AM. LITERATURE FOR. 39, 44–45 (1972) (commenting that the “black writer has a vested interest in creating mysteries, in encoding his insights in such a way as to make decipherment a racial prerogative[.]” and while there may be no attempt by the white critic “to intrude on art deliberately created as a cabalistic gesture[.] . . . if Imamu Baraka chooses to publish his work through Bobbs-Merrill or Ed Bullins to collect royalties on plays offered for public performance the white critic will continue to be tempted to venture an opinion, and to do so without even a sympathy pain for Liberal anguish.”); Robert C. Hart, *Black-White Literary Relations in the Harlem Renaissance*, 44 AM. LITERATURE 612, 613 (1973) (commenting of DuBois, that despite his claims that white writers should not write about Black people, “it is probably true, as one biographer of DuBois has said, that he failed to appreciate the full extent to which black creative work was dependent on white support until the Harlem Renaissance collapsed in the early years of the Great Depression.”); Nielson, *supra* note 189, at 164 (discussing the sense of entrapment felt by those in the Black Arts Movement, leading them to create their own black institutions; however, “despite Baraka’s attempt to create a truly independent and separate space for blacks, he had to seek funds from the very white establishment he hated in order to operate.”).

¹⁹⁵ Keller, *supra* note 192, at 104 (“I propose that someone who has not had the black experience forget about making critical judgments. Assuredly he can’t do it the way it has so often been done[.] . . . [T]hat is, by assembling a model of the skeleton, assert meaningful things about the dimension of the flesh. Because he must of course deduce the structure of the whole from its many fragilities of meaning. . . . Such critics are inept, for the most part, because they cannot claim competence.”); see also Bigsby, *supra* note 194, at 41–42 (critiquing editorial by Lisbeth A. Grant, who in a 1970 issue of *Black World*, wrongly identified an editor of short stories (written by Black authors) as a white man, and thus argued that the short stories were “tinge[d]” so they could “‘live up’ to certain white standards[.]” when in fact, as Bigsby writes, the editor was a black man, and Lisbeth’s mistake of the editor’s race made her “critical response . . . utterly and dreadfully predictable. Since she is convinced that no white can hope to understand what she calls ‘the black experience’ this must become a collection of impressive black stories ruined by an arrogant and ignorant white editor.”); Hart, *supra* note 194, at 613 (commenting that DuBois, “[w]ith all his cooperative associations with the white world, however, . . . took the stand that militant young blacks often take today, which is that white writers would keep their hands off Negroes as subject matter to write about.”).

¹⁹⁶ Stimpson, *supra* note 191, at 40 (“Black plays demand a vital relationship between actors and audience, which is also participant and chorus. Black novels promise acute characterization. . . . Creating characters means not only focusing the imagination upon others, but also detecting psychological fraud, sniffing out the gap between illusion and reality, between word and deed: these gifts exist in abundance in black literature. . . . [B]lack literature organizes human experience for the sake of experience, vitality and consolation.”).

It was well understood that speaking to the Black community through a Black voice was the driving force behind the Black Arts Movement.

In the end, without “a corps of critics, respected by both artists and members of the community,”¹⁹⁷ the Black community was left without guidance on how to respond to Black Arts. One White critic went so far as to remark that “Black literature is not created simply by *fiat* or a semantic shift from ‘Negro’ to ‘Black.’”¹⁹⁸ Rather, Black literature

must not merely reflect a totally different experience but must express fundamentally different values and aesthetics in a form and language exclusive to the black community. Such a literature is possible . . . But nine-tenths of the literature presently described as black differs no more radically from American literature than Dylan Thomas does from English. The accent is black, the language white; the daily experience black, the cultural context white. . . . So long as this remains true the white critic has a legitimate and valuable role to play, and even when it ceases to be true the interplay of black writer and white critic may still strike sparks which may be mutually illuminating.¹⁹⁹

Whether right or wrong, that Black literature needed to express an experience so uniquely different than that of White America, the larger point is that the *for us by us* sentiment ultimately failed because it could not escape “the very forces of white repression that ‘Black Art’ strive[d] to expel.”²⁰⁰ This tension is the soil in which *The Wiz* was planted.

B. *The Wiz: The Super Soul Musical “Wonderful Wizard of Oz”*

Revered by some, criticized by many, *The Wiz* was donned by one commentary—to which belongs the Interlude’s opening quote—as the “white construction of black experience.”²⁰¹ The musical version of *The Wiz*, written by a Black man in 1974,²⁰² followed the plot and characters of its 1939 predecessor, but, as one critique wrote, introduced a “black influence” by “incorporat[ing] a new vocabulary of speech, song, and movement, as well as new meanings for the tropes of ‘home’ and a spiritual journey in a hostile environment.”²⁰³ Four years later, in 1978, Sidney Lumet, a White man, turned the musical into an MGM movie.²⁰⁴ The storyline is largely the same. The Kansas Dorothy of 1939

¹⁹⁷ Jones, *supra* note 194, at 70 (“Both sides [stood] in need of critics capable of explaining the reasons that a given work [did] or [did] not make a contribution to black life.”).

¹⁹⁸ See Bigsby, *supra* note 194, at 43.

¹⁹⁹ *Id.*

²⁰⁰ Nielson, *supra* note 189, at 162.

²⁰¹ Giarrusso, *supra* note 24.

²⁰² WOLF, *supra* note 190.

²⁰³ *Id.* at 112–13 (providing a detailed commentary on *The Wiz* musical, circa 1974, as important to the 1970s feminist movement where Dorothy, as the only woman “leader or initiator” of a Broadway musical during this era “allude[d] to the significance of women as mothers, breadwinners, and leaders in the African American community in the 1970s.”).

²⁰⁴ Charlie Smalls & William F. Brown, *The Wiz*, BROADWAY MUSICAL HOME, <http://www.b>

is now the Harlem, New York, Dorothy of 1978.²⁰⁵ Like her predecessor, Harlem Dorothy is dissatisfied with her home, and yearning to find her place she travels down the Yellow Brick Road and also meets “her three expected companions . . . [e]ach . . . looking, ostensibly, for the same thing as the original—brains, a heart, courage. But one could also argue that all the characters—not just Dorothy—are looking for a home.”²⁰⁶

The stark difference between Dorothy circa 1939 and 1978 is this: the 1978 film (and 1974 musical) had an all-Black cast. But whether this all-Black cast transformed *The Wiz* into a “Black” work befitting the Black Art movement, begs a return to the sentiment of a White critic: did *The Wiz* simply “reflect a totally different experience” of the 1939 film with Black faces, or did it “express fundamentally different values and aesthetics in a form and language exclusive to the black community[?]”²⁰⁷ The latter seems to be the necessary feature to move black art outside of white contours.

The critiques of *The Wiz* were plentiful, but for this Article’s purpose, I highlight for consideration one broad question a commentator posed: was *The Wiz* film part of the Black Arts Movement?²⁰⁸ On the one hand, some viewed *The Wiz* as part of the Black Arts Movement because it highlighted themes of liberation for Black people, representing a story of the “black experience in white mainstream America.”²⁰⁹ For example, one supportive commentator donned *The Wiz* as “American Culture at Its Best”²¹⁰ and in many respects rebuked the movie-going American public for its inability to “see past” the 1939 version of the film, to the intentional use of “stereotypical images and typecast characters [that] point to a greater political statement[,]” that is, “mainstream America and Hollywood’s refusal to come to grips with the issues and obstacles concerning Black people in the United States.”²¹¹ To the extent the White critic did not sing its praises, it was often the viewpoint that the critic “was on foreign ground culturally[,]”²¹² and was trying to “force the black perspective into alignment with the white one.”²¹³

roadwaymusicalhome.com/shows/wiz.htm [https://perma.cc/S8BA-DSK4]; *Sidney Lumet Biography*, IMDb, https://www.imdb.com/name/nm0001486/bio?ref_=nm_ov_bio_sm [https://perma.cc/JQH9-L2UH].

²⁰⁵ Giarrusso, *supra* note 24.

²⁰⁶ *Id.*

²⁰⁷ Bigsby, *supra* note 194, at 43.

²⁰⁸ Giarrusso, *supra* note 24.

²⁰⁹ *Id.*

²¹⁰ Williams, *supra* note 188, at 191.

²¹¹ *Id.* at 191–92 (noting that “Lumet shows that the salvation of the Black family and community lies with the Black woman.”).

²¹² Jones, *supra* note 194, at 72.

²¹³ *Id.* (“When blacks interpret white works, white critics want the result to match the white prototype, and when it does not, they become hostile . . .”).

On the other hand, *The Wiz* was discounted by many for inclusion in the Black Arts Movement.²¹⁴ It was simply not enough that the cast was all Black. For Black members of the movement, Black Art had to embody the *for us by us* mantra central to the movement.²¹⁵ A prevailing thought was that in order to “facilitate the survival of black people,” white mainstream culture had to be wholly rejected.²¹⁶ Put another way, “assimilation or [other] tools of the white mainstream culture” could not be used “to further black art and literature.”²¹⁷ That was *The Wiz*’s (film) downfall. It was not written or produced by Black people. It was “written, directed and produced by white men for Broadway, a white mainstream institution, and then Hollywood.”²¹⁸ One commentator called it “an all-black adaptation of *The Wizard of Oz*.”²¹⁹ And perhaps that was the problem. Some White critics found that *The Wiz* bore “no resemblance” to the beloved *The Wizard of Oz*, and thus it was discarded as lacking quality.²²⁰ This subtle (or not so) requirement that *The Wiz* needed to resemble *The Wizard of Oz* has an explicit subtext, which is this: black interpretations of white works must still imitate white life.²²¹

²¹⁴ Giarrusso, *supra* note 24 (analyzing *The Wiz* in the Black Arts Movement by looking at “production and creation of the film and its role as a musical, some of the major themes that arise and how they reflect aspects of black culture and the use of music”).

²¹⁵ See, e.g., Nielson, *supra* note 189, at 166 (commenting on Larry Neal’s desire for the movement to destroy double-consciousness and noting the difficulty in doing so “when whiteness is so thematically central to poetic expression that is intended to be *by and for black people*.” (emphasis added)); Giarrusso, *supra* note 24 (“Black Arts Movement artists considered their work to be art created by black people for a black audience—that speaks ‘directly to the needs and aspirations of Black America.’” (quoting Larry Neal, *The Black Arts Movement*, 12 THE DRAMA REVIEW: TDR 28, 29 (1968)), and also noting that the “most notable feature of *The Wiz* that might exclude it from direct placement in the Black Arts Movement is its almost entirely white creation team. If we strictly adhere to Baraka and Neal’s credo about the Black Arts Movement that it was a separatist endeavor and art that was by black people for a black audience, the fact that the director (Sidney Lumet) and producer (Rob Cohen), along with the writer of the original book for the Broadway production (William F. Brown) and the man who adapted the Broadway book for the screen (Joel Schumacher), were all white seems to be an immediate disqualification.”).

²¹⁶ Giarrusso, *supra* note 24.

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ WOLF, *supra* note 190, at 111; see also Claudia A. Beach, *The Wiz as the Seventies’ Version of The Wizard of Oz*, in THE UNIVERSE OF OZ, *supra* note 188, at 200–01 (critiquing the 1974 musical, noting “*The Wiz*, has been described as the black version of the classic children’s story, *The Wizard of Oz*[,]” and analyzing and ultimately discrediting *The Wiz*’s failure to have a discernible message—compared to the 1939 version (“There’s no place like home”) on three facts: “the security of home, the threat of Oz, and the relief of returning to home[.]”).

²²⁰ Jones, *supra* note 194, at 72.

²²¹ See *id.* at 73–74 (noting that “white critics are usually unfriendly to black interpretations of ‘white’ classics,” and that “[b]ecause whites control the arts, they are in a position to make black art imitate white life.”); Williams, *supra* note 188, at 195–96 (commenting that critics dismissed Sidney Lumet’s *The Wiz* “as a poor replica of [Frank] Baum’s text,” and perhaps in an attempt to legitimize *The Wiz* in the eyes of its original predecessor, adding

The inquiry of whether *The Wiz* was part of the Black Arts movement forces a more theoretical conversation that bears relevance when drawing parallels with legal writing pedagogy and IRAC. Namely, whether a white construction or prototype can authentically capture the marginalized voices and experience,²²² or put otherwise, whether a marginalized experience now embodies an element of assimilation into a mainstream discourse.²²³ Perhaps it is the want for certainty that reflects the divergent critiques of *The Wiz*, then and now.

C. Rethinking IRAC's Innocence

This Interlude opened with the question of whether there was harm in letting IRAC, and similar reductive paradigms, be an entry point for more complex legal analysis. In a word, Yes. And similar to *The Wiz*, I suspect there are divergent critiques to this seemingly harmful approach, chief of which is a stunted analytical process—which I argue subsumes identity development—for novice law students.

It is largely accepted within the legal academy, particularly among legal writing scholars, that good legal writing does not rest in novice law students simply mimicking IRAC because many students mimic the form without regard for the underlying substance.²²⁴ To this point, while many inside and outside the legal writing discipline offered mountains of praise toward IRAC's methodical usefulness, there were also valleys of caution. For example, Professor

that “*The Wiz* has the same characters, character flaws, and names as the Baum’s narrative[,] . . . [t]he Land of Oz has the same plights of a Wicked Witch . . . Dorothy journeys through Oz to find the Wizard[,]” thus there is an “alignment on the basic genetic structure.”).

²²² Or experience from any traditionally marginalized group that diverges from the dominant group.

²²³ See Giarrusso, *supra* note 24.

²²⁴ Legal scholars make a clear distinction between novice and expert legal writers. See, e.g., Keene, *supra* note 170, at 486, 488 (2013) (commenting that “[a] novice lacks certain characteristics and competencies: the novice does not yet have the knowledge of an expert in a community or yet have the habits of thinking or the tone of voice[,]” and that “novice legal writers may have difficulty organizing a document not because they lack an understanding of the law or the technical steps needed to devise a proper structure, but because they lack the depth of experience needed to decide what information the document’s decision maker will find most useful or persuasive.”); Graham, *supra* note 70, at 700 (summarizing the differences between novice and expert legal writers, finding that “[e]xpert legal writers adopt specific rhetorical strategies for producing well-organized, precise, and deep legal analysis. . . . Expert legal writers are also able to step back from their writing and imagine audience needs and responses. The expert’s written product is thus reader-centered, with a clear focus on the document’s communicative purpose. Novice legal writers, on the other hand, tend to view the writing process as linear, cannot remove themselves from their writing, and concentrate on telling what they know irrespective of their audience’s needs. The result is a ‘knowledge-telling’ document that memorializes the writer’s thought processes but is not of great use to the reader.” (quoting Susan E. Provenzano & Lesley S. Kagan, *Teaching in Reverse: A Positive Approach to Analytical Errors in 1L Writing*, 39 LOY. U. CHI. L.J. 123, 162 (2007))).

Gionfriddo calls “[f]ormulas like IRAC and its progeny” dangerous because their

simplistic nature masks the series of complex, interrelated steps that students need to learn to analyze and write about legal problems in a sophisticated manner. . . . Students who do use this type of formula too often follow its format without thinking enough about the process of legal analysis.²²⁵

Similarly, Graham “urge[d] the legal academy to . . . return to the roots of IRAC, using it only to illustrate the basic framework for conducting legal analysis, instead of presenting it as a template for writing that students should rigidly follow.”²²⁶ I would, however, push these sentiments even further by highlighting the highly relevant context: these are first year law students.

Is it reasonable to ask first year law students to moderate their use of a framework that, to them, may correlate with success? And should we do so, as Calleros notes, to a group that is arguably insecure in their ability to succeed against the rigors of the first year?²²⁷ Stated frankly, despite our warning, they may be powerless to acquiesce to such a cautious approach. If presented with a template for conducting legal analysis that they can imitate, with a false perception of success, how do we realistically temper students’ use of this “simple” tool, especially if the alternative is to engage with the in-depth Analytical Framework? And perhaps of greater concern, who or what are they imitating? Such a fear of imitation created a serious problem for Black Arts, as its proponents questioned whether work that purported to “speak to and for blacks through a traditionally white medium”²²⁸ could be included. How does one distinguish between trustworthy Black voices, and “those who had become tools of the white establishment.”²²⁹ Going one step further, as Wildman warns, there is a subtle and often masked affiliation between “[m]embers of the privileged group” and “the dominant side of the power system.”²³⁰

For these reasons, this Article’s critique of IRAC goes further than a view of IRAC as just a framework. For novice law students, the seductive allure of IRAC’s professed usefulness as a *prototype* of analytical structure may be a slow fade toward a perceived norm of analytical process. But IRAC’s shortcoming is not a technical oversight that is cured by simply teaching IRAC alongside a legal analysis process. To do so would ascribe IRAC as *only* representing the outer signal of deductive reasoning. In other words, IRAC is Issue,

²²⁵ Gionfriddo, *supra* note 165.

²²⁶ Graham, *supra* note 70, at 682.

²²⁷ See Calleros, *supra* note 69, at 4.

²²⁸ Nielson, *supra* note 189, at 168.

²²⁹ *Id.*

²³⁰ WILDMAN, *supra* note 62, at 14–15 (1996) (discussing examples such as legacy admissions at elite colleges and professional schools that are perceived to be merit-based, but have ignored any affiliation with power, thus “[a]chievements by members of the privileged group are viewed as the result of individual effort, rather than privilege.”).

Rule, Application and Conclusion—no more. That is not my claim.²³¹ To the extent that IRAC, from an identity perspective, presents as a rigid, scientific, methodical, objective, and neutral²³² approach to legal analysis, an approach that may unconsciously blind oppression, we do students a disservice to readily offer it up as an entry point to a more complex analysis that is equipped to authentically express marginalized voices and borderland perspectives.²³³

This critique mirrors the pinnacle critique of the Black Arts Movement—that is, could the black (i.e., marginalized) perspective or experience be deemed authentic when relying on a “white prototype.”²³⁴ I am equally concerned that as professors and evaluators of our students’ work, we will unconsciously become that “White critic” who found it “easier to evaluate black performing artists in terms of white canons, . . . [which] cheat both black and white artists out of the rich exchange[,] . . . leav[ing] their respective racial communities in ignorance of one another.”²³⁵

²³¹ See *supra* notes 24, 75 and accompanying text.

²³² Professor Margaret Montoya makes an interesting point regarding neutrality, stating the following:

We see the world through our lived experience, we see the world through our gender, through our race, through our sexual orientation. An important observation that Martha Minow, a feminist law professor at Harvard Law School, has made is that we are not abandoning impartiality. We increase our impartiality when we claim our partiality. That is when we say, “I speak as a Latina, I speak from this place of experience.” I then put more things on the table about that observation.

Montoya & Zuni Cruz, *supra* note 115, at 159.

²³³ *Id.* at 157, 159 (discussing a narrative braids project by Professors Margaret Montoya and Christine Zuni Cruz during an American Indian Law & Literature conference, where the cultural braid-wearing became a decision to “abandon the accouterments of success as determined by ‘others’—the suits, the ties, the car” and “contend[ing] that the silencing of race throughout the legal system, in classrooms and in courtrooms, is one of the principal mechanisms for maintaining the ideology of White supremacy. It is the practice of hegemony through education. From a Freirean perspective, students are denied the ability to participate in liberatory education because of this systemic silencing about racism and other types of oppression.”); see also Williams, *supra* note 188, at 193–94 (analyzing the social and political setting of *The Wiz* 1978 film, namely the Women’s Rights and Civil Rights movements, and noting that Black women (referencing Andres Benton Rushing, Barbara Smith and Deborah McDowell) began to create narratives for themselves on “how and where they fit in the feminist movement” by distinctly creating “a gap analysis” of “traditional white feminism[;]” that is, “‘Eurocentric’ or white feminist qualities and categories of stereotypical white women were ‘passivity, compliancy, the submissive wife, and woman on a pedestal’ compared to the ‘signs and structures to categorize Black women,’ including “[m]otifs of interlocking racism, sexism, and classism oppression[;] Black feminist protagonist[;] Spiritual journeys from victimization to the realization of personal autonomy or creativity[;] Centrality of female bonding and networking[;] Sharp focus on personal relationships in the female realm or community[;] Deeper, more detailed exploration and validation of epistemological power or emotions[;] Iconography of women’s clothing[;] Black feminist language.”).

²³⁴ Jones, *supra* note 194, at 72.

²³⁵ *Id.* at 73–74 (commenting that white teachers of voice, performing artists, and critics, must be careful to not “measure black artistic works against white society and culture[.]” for

As an identity scholar, and one who ascribes to the white normativity of IRAC, I am sensitive to a narrative that casts IRAC as an entry point, and I question whether it is implicitly an invitation to assimilate. Assimilation can “eliminate cultural differences, and the loss of any distinctive characteristics, to fit in with the dominant society.”²³⁶ Its use as an identity strategy signals that “[t]o effectively participate in dominant society, you must conform to the structures of mainstream organizations.”²³⁷ This cannot be the spirit of legal analysis. Not only do novice law students lack the expertise and wisdom to appreciate IRAC’s analytical limitations, they also cannot appreciate IRAC’s positioning inside a larger and dominant power structure. It is possible, however, to remain mindful of genre conventions for any profession and simultaneously leave ample room for creative and conscious use of voice to highlight blind spots or push boundaries. Such heavy lifting is the delight of the Analytical Framework.

Of interest to me here, however, is both personifying and exploring the *narrative* of the Analytical Framework, how it is constructed or represented to an audience²³⁸ and its ability to reach to the margins. What is its identity development? *The Wizard of Oz*, for decades, offered a story of the Wicked Witch of the West, and a very one-dimensional story at that. She was the creepy mean neighbor who hated Dorothy’s dog Toto, and later, after predictably evolving into the wicked witch of Dorothy’s dream, was particularly perturbed by the red shoes Dorothy wore. Needless to say, we did not shed a tear when Dorothy dumped a bucket of water on her head. But *Wicked* offers a much-needed narrative of Elphaba, the famed Wicked Witch of the West—a telling of how her identity developed. She has a name; and we learn of her birth, her college years, her passions, frustrations, and insecurities; and we gain insight into the choices that she made (or was left with) before and leading up to the timeline of *The Wizard of Oz*.

Ironically, when Act I began, we tapped our feet to the beat of “No one Mourns the Wicked”²³⁹ and understood the Ozians joy in the death of the Wicked Witch of the West. As Act I closes, however, arguably with the most captivating score of the entire show, “Defying Gravity,” our hearts ache as we watch Elphaba tire of succumbing to the rules of a community that has unjustly and unashamedly declared her wicked.²⁴⁰ And as she is magically hoisted into

fear as many Black people argued, “whites employ their dominant position to determine the direction of black art.”).

²³⁶ MARK P. ORBE, CONSTRUCTING CO-CULTURAL THEORY: AN EXPLICATION OF CULTURE, POWER, AND COMMUNICATION 89 (1998).

²³⁷ *Id.* at 90–91.

²³⁸ CAROLYN GROSE & MARGARET E. JOHNSON, LAWYERS, CLIENTS, AND NARRATIVE: A FRAMEWORK FOR LAW STUDENTS AND PRACTITIONERS 9 (2017).

²³⁹ *No One Mourns the Wicked Lyrics*, ALLMUSICALS, <https://www.allmusicals.com/lyrics/wicked/noonemournsthewicked.htm> [https://perma.cc/XCA9-XKGT].

²⁴⁰ *Defying Gravity Lyrics*, ALLMUSICALS, <https://www.allmusicals.com/lyrics/wicked/defyinggravity.htm> [https://perma.cc/U9CK-XVKK].

the sky daring anyone to “ground” her or “bring [her] down,”²⁴¹ and bravely proclaims her decision to be through accepting limits “[c]uz’ someone says they’re so,”²⁴² our hearts and minds are opened to the social scar that the “green-skinned freshman” endured. After decades of being called wicked, we enter Act II a bit humbled. Perhaps we owe it to Elphaba to let her navigate her identity as she sees fit.

“I want to remember this moment, always. Nobody’s pointing, nobody’s staring, for the first time, I’m somewhere that I belong.” —Elphaba²⁴³

ACT II: *I’M NOT THAT GIRL*: THE ANALYTICAL FRAMEWORK’S UNTOLD NARRATIVE

“All of us experience being misunderstood and feeling ourselves outside. . . . ‘All of us have that green girl inside of us. It’s that stroke of genius that [the Wicked author] had in seeing something that no one sees until they do, then everyone sees it. And that’s to look at the story from the so-called villain’s point of view and realize that they are so much more than we like to paint them for our own convenience’²⁴⁴ —Wicked composer Stephen Schwartz²⁴⁵

If Act I is the wicked side of good in terms of the shortsightedness that can come from privilege, status, and dominance, then Act II is the good side of wicked in terms of pushing against socially constructed identities and fighting with conviction toward the welfare of others.²⁴⁶ For the Analytical Framework, overshadowed and perhaps weighed down (at least in the eyes of law students) by complexity, Act II is her freedom song. As Freire articulates in *Pedagogy of the Oppressed*, the oppressed “discover that without freedom they cannot exist authentically,” though they often fear such an authentic existence.²⁴⁷ For there is a conflict the oppressed must acknowledge between

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Wicked Script: act I, sc. 14*, WICKEDLYWICKED, (Jan. 30, 2009), <http://wickedlywicked.blogspot.com/2009/01/wicked-script.html> [https://perma.cc/5D5K-FREV] (during the song “One Short Day” near the end of Act I, when Glinda and Elphaba are journeying toward the Emerald City, and “it’s all green!”).

²⁴⁴ Rizzo, *supra* note 26.

²⁴⁵ *Id.* (interviewing the “two wizards of ‘ahs’ — ‘Wicked’ author Gregory Maguire and the musical’s composer Stephen Schwartz” on the process behind the creation of *Wicked*).

²⁴⁶ The broad strokes of Elphaba’s story in Act I reveal her goodness when she learns about the mistreatment toward the animals, (see “Something Bad (happening in Oz)”), and when she decides to take a stand against the Wizard in order to help the animals. See *Defying Gravity Lyrics*, *supra* note 240; Carol de Giere, *Wicked Summary of Plots and Subplots*, <http://www.musicalschwartz.com/wicked-songs.htm> [https://perma.cc/6AQA-AUD9]; see also Rizzo, *supra* note 26 (discussing Elphaba’s desire to do good although mistakes are being made).

²⁴⁷ FREIRE, *supra* note 92, at 48.

following prescriptions or having choices; between being spectators or actors; between acting or having the illusion of acting through the action of the oppressors; between speaking out or being silent, castrated in their power to create and re-create, in their power to transform the world.²⁴⁸

If allowed to tell her own narrative²⁴⁹ in all its richness, the Analytical Framework is freed to add depth to legal analysis, to create room for marginalized voices, and to develop further the existing identity of novice law students.

In many ways the Analytical Framework is an Other in legal analysis. It is not that it is invisible, but its process is often the drudge—burdened as the hard, menial, and tedious journey of creating effective and moving legal analysis. If students can bypass, for example, the rhetorical considerations in issue framing, particularly in view of narrow judicial opinions; avoid the political and social considerations stemming from today's headlines; or ignore cultural considerations that may challenge a Western normative worldview and just replicate a formulaic structure such as IRAC as mirroring good legal writing, they will. Who wouldn't? The answer, however, is not to rid legal analysis of its depth. But to view the depth on its own terms and give meaning to its own story, without viewing it through the shallow and misleading lens of IRAC. To do so otherwise would make anything look wicked.

In earlier work I questioned if there was any space for Others to prosper within a dominant structure and simultaneously retain all or part of their cultural identity.²⁵⁰ This inquiry gave rise to what I termed *conscious identity performance*—a theory that emanated from the limitations that tended toward assimilation in legal scholarship, coupled with a fusion of the work of anthropologist and feminist communication theorists who more thoroughly examined how non-dominant cultures communicated in dominant spaces.²⁵¹ Conscious identity performance offers an empowerment for Others to choose how they will perform their identity, but here, it is the development of identity performing strategies through the phenomenological analytical approach²⁵² that bears relevance to both Elphaba and the Analytical Framework. The beauty and strength of the phenomenological approach is to provide transparency to the identity development of Elphaba and the Analytical Framework—to bring the reader “as close as possible to the experiences and structures” of these two essences in a creative and approachable way.²⁵³ After all, “everyone deserves the chance to fly.”²⁵⁴

²⁴⁸ *Id.*

²⁴⁹ This is the benefit of phenomenology as an exploratory tool of identity.

²⁵⁰ Culver, *Conscious Identity Performance*, *supra* note 4, at 579, 586, 592, 605.

²⁵¹ *Id.* at 579–80 (citing MARK P. ORBE, *supra* note 236, at 50).

²⁵² See *supra* notes 16–20 and accompanying text, and *infra* note 257, for a brief overview of the phenomenological approach.

²⁵³ GRBICH, *supra* note 16, at 100.

²⁵⁴ *Wicked Script: act I*, ALL MUSICALS, <https://www.allmusicals.com/lyrics/wicked/script.htm> [https://perma.cc/5BZF-VX2S] (providing lyrics to “Defying Gravity” sung by Elphaba at the end of Act I).

As an example of phenomenology in literature, Elizabeth Peterson models the phenomenological approach through her study on the will and success of African American woman through their own works.²⁵⁵ Specifically, in reading the literature of African American women, Peterson observed themes of will and success as emanating from their own writing, noting that the “[phenomenological] approach will allow the will to be studied as it emerges in the consciousness of individual human beings. By intuiting, analyzing, and describing the will as it appears, a deeper understanding of the African American woman is possible.”²⁵⁶ To this point, Mary Helen Washington remarks that

When black women told the stories 'bout their real lives and actual experiences, they proved the power of art to demolish stereotypes; and if power is the ability to name one's own experience . . . a first step toward power, for it celebrated the legends of black women, weaved dreams into myths that allowed us to recover and name our own past.²⁵⁷

I believe the success behind *Wicked* is largely due to the power it gave the Wicked Witch of the West—Elphaba—to name her own experience. Viewing her narrative, through her eyes, through her point of view was so powerful that it turned the 1939 classic, *The Wizard of Oz*, on its head, and the crowd revered the “so-called villain[.]”²⁵⁸

The use of narrative storytelling has been instrumental in the lives of those living at the margins.²⁵⁹ For this Article, I add broad strokes of the phenomenological approach to the narrative storytelling (how the subject is represented), with particular focus on investigating one phenomenon: Elphaba. I also include analogies drawn between Elphaba and the Analytical Framework. As I read and

²⁵⁵ PETERSON, *supra* note 16, at 23, 30–31.

²⁵⁶ *Id.* at 29–30. Here, Peterson is relying on the intricacies of the first of seven steps of the phenomenological approach. *Id.* at 25–26. Martin Heidegger is the creator of the phenomenological method, a Greek study that combines phenomenon and logos, “which roughly translates to ‘let that which shows itself be seen from itself in the very way in which it shows itself from itself.’” *Id.* at 23 (quoting MARTIN HEIDEGGER, BEING AND TIME, 58 (John Macquarrie & Edward Robison trans., 1962)). In sum, the seven steps are: (1) investigating particular phenomenon (which include intimating the phenomena, analyzing the phenomena, and describing the phenomena; (2) investigating general essences, (3) apprehending essential relationships, (4) watching for modes of appearing, (5) exploring the constitution of phenomena in consciousness, (6) suspending belief in existence, and (7) interpreting the phenomena (this is the hermeneutical process of interpretation). *Id.* at 25–26.

²⁵⁷ *Id.* at 31 (quoting Mary Helen Washington, *Introduction* to MIDNIGHT BIRDS xiii (1980)).

²⁵⁸ Rizzo, *supra* note 26.

²⁵⁹ See, e.g., DELGADO & STEFANCIC, *supra* note 114, at 45, 52–53 (offering robust discussion on legal storytelling and narrative analysis, noting that “[c]ritical race theorists have built on everyday experiences with perspective, viewpoint, and the power of stories and persuasion to come to a deeper understanding of how Americans see race.”); Henry Louis Gates, Jr., *Introduction* to READING BLACK, READING FEMINIST: A CRITICAL ANTHOLOGY, *supra* note 37, at 2, 6–7 (canonizing the “Afro-American women’s literary heritage” in tradition to, as Mary Washington argues, “record the thoughts, words, feelings, and deeds of black women, experiences that make the realities of being black in America look very different from what [Black] men have written.”).

re-read the script of the *Wicked* musical, being transported back to the many live performances I saw over the last decade, Elphaba's exchanges with the other famed characters from *The Wizard of Oz* intrigued me because the essential essence of her own character was manifested through those interactions. In respecting the phenomenological approach, which is to bring the reader closer to Elphaba's experiences, I intentionally include excerpts of the *Wicked* script that narrate her interactions with these characters before drawing any thematic conclusions. While there is no yellow brick road to follow here, we are off to see the Wizard, eventually; but let us first visit the Tin Man, Scarecrow, and Cowardly Lion.

A. *The Tin Man: On the Heart of the Issue*

"[O]nce legal writing teaches the student the perspective of the legal audience and how to frame the issues in a way consistent with that audience, it is unlikely that the student will be able to step outside the legal framework, and use his or her 'pre-lawyer' outsider voice to address legal issues."—Kathryn M. Stanchi²⁶⁰

A life-size chunk of rusted metal, holding an ax mid-swing, who longed for the therapeutic relief of oil—that was the 1939 portrayal of the Tin Man in *The Wizard of Oz*. Fast forward a few decades and we are transported back in time and introduced to Boq, a college classmate of Glinda who is utterly obsessed with her, but she is utterly obsessed with the new boy in town, Fiyero.²⁶¹ And to add yet another vulnerable heart into the equation, Nessarose, Elphaba's sister who is aided by a wheelchair, is obsessed with Boq.²⁶² So recap: Nessarose is in love with Boq who is in love with Glinda who is in love with Fiyero who is in love with . . . well, himself, at least in Act I.²⁶³ In Act II, the conflict between Elphaba, Nessarose, and Boq shows broadly how reframing an issue can shift what is seemingly good to wicked or what is seemingly wicked to good. More particularly, as we move into Act II, we are given insight into the essence of Elphaba that can be intuited, analyzed, and described²⁶⁴ most simply as Elphaba's genuine goodwill.

In second scene of Act II, arguably three issues illuminate from the vantage point of these three characters. To start, the once love-struck Boq has become a dispassionate emblem of his former self as he serves at the (dis)pleasure of Nessarose, who is now the Governor of Munchkinland.²⁶⁵ Elphaba has moved

²⁶⁰ Stanchi, *supra* note 12, at 30; GROSE & JOHNSON, *supra* note 238, at 9.

²⁶¹ *Wicked Script*, *supra* note 243, at act I, sc. 7.

²⁶² *See id.* at act I, sc. 8 (showcasing Glinda, in an attempt to deflect Boq's desire to dance with her at the upcoming Ball, encouraging Boq to invite Nessarose to the Ball).

²⁶³ *See id.*

²⁶⁴ For the discussion of the first step of phenomenological research method, see Sossin, *supra* note 88, at 888–89, 894, 899, and accompanying text.

²⁶⁵ *Wicked Script*, *supra* note 243, at act II, sc. 2.

away from Oz to spread the wings of her newfound courage and conceal herself from those trying to capture her, but in this scene she appears suddenly in Nessarose's mansion seeking her father's help in rescuing the animals from Munchkinland.²⁶⁶ Needless to say she is quite surprised to learn all that has happened in her absence, chief of which is Nessarose's less than sunny disposition during her rise to power and an equally embittered Boq. When Elphaba confronts Nessarose, she tells her that their father died due to shame from Elphaba, and that she has now become the governor.²⁶⁷ Unmoved by her father's death, Elphaba leans on her sister to help her, remarking, "now it's just us. You can help me and together we can . . ."²⁶⁸ Nessarose interrupts Elphaba, clearly not interested in helping her sister, and yells, "And why should I help you? You fly around Oz, trying to rescue animals you've never even met, and not once have you ever thought to use your powers to rescue me!"²⁶⁹ We can begin to see a bit of what (or who) Nessarose thinks is the problem in the present conflict.

Perhaps a bit defeated, but wanting to help her sister, Elphaba begins chanting and conjures up a spell that allows Nessarose to get out of her wheelchair and stand.²⁷⁰ And with a sigh of relief, Elphaba exclaims, "Oh, Nessa, at last . . . I've done what long ago I should and finally from these powers something good[,] finally something good. . . ."²⁷¹

Naturally excited for her own miracle, Nessa calls for Boq to surprise him with what she hopes will be a new chapter in their awkward and unrequited love tale. As he hastens quickly to tend to "Madame" Nessarose, he sees Elphaba, who seems saddened by his state of being and softly assures him that she is not going to hurt him.²⁷² Unmoved by her concern, Boq raises his voice and retorts that both Elphaba and Nessarose are equally wicked, particularly because Nessarose has not permitted Boq or anyone else in Munchkinland to leave.²⁷³ Ultimately we learn that Nessarose intended to use her power to keep Boq by her side, as Boq cries out, "Ever since she took power, she's been stripping the Munchkins of our rights . . . and we didn't have that many to begin with!"²⁷⁴ Here, like Nessarose, we can begin to see a bit of what (or who) Boq thinks is the problem in the present conflict.

Arguably from the vantage point of Boq or Nessarose, it might appear that the central problem is Elphaba. But what does this scene look like from Elphaba's vantage point? The intensity increases on stage, now between Nessarose

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ *Id.*

and Boq. Boq becomes instantly enlightened at Nessarose's new ability to walk, seeing it as a perfect reason to leave her and return to his true love, Glinda—who is now conveniently engaged to Fiyero (yes, the plot thickens).²⁷⁵ When Boq confesses that he “lost [his] heart to Glinda from the moment [he] first saw her[.]” Nessarose erupts, “Lost your heart? Well, we’ll see about that”²⁷⁶ Despite Elphaba's cry for Nessarose to release Boq, Nessarose's anger wraps Boq in a magical grip, and she yells, “You’re going to lose your heart to me, I tell you! If I have to . . . I have to”²⁷⁷ In her fury, Nessarose grabs Elphaba's book of spells and begins stammering uncontrollably, mispronouncing the words, and completely ignoring Elphaba's pleas to stop.²⁷⁸ Her rage is intense. The tragic result of her passionate utterance is a shrinking heart for Boq, for which Nessarose shrieks at Elphaba to do something:²⁷⁹

Elphaba: I can't! You can't reverse a spell once it's been cast!

Nessarose: So what do we do?

Nessarose: Elphaba, do something!

Nessarose: This is all your fault! If you hadn't shown me that horrendible book.

Elphaba: I have to find another spell . . . it's the only thing that might work.

Nessarose: Save him, please!²⁸⁰

While Elphaba takes Boq behind a curtain on stage, the orchestra's melody intensifies the audience's anxiety as we wait nervously and stare—perhaps a bit differently now—at Nessarose and Elphaba. Eventually, Elphaba emerges from behind the curtain; her heaviness is palpable as she responds to Nessarose's inquiry about Boq's heart. “It's all right[.]” Elphaba says softly, “[h]e won't need one now. I have to go. I have business to attend to in the Emerald City.”²⁸¹ As she turns to walk away, with one last glance at Nessarose, Elphaba's final words are, “Nessa, I have done everything I could for you but it has never been enough and it never will be”²⁸² With that, Elphaba leaves Nessarose forever. Like Nessarose and Boq before her, especially in her final words to Nessarose, we can begin to see a bit of what (or who) Elphaba thinks is the problem in the present conflict.

And what of Boq? What does any of this have to do with the Tin Man? Well, when Boq wakes up from Elphaba's spell, he sits up confused and squeaking. To the shock of both himself, Nessarose, and the viewing audience, he has been transformed into the Tin Man—a necessary transformation to save

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² *Id.*

his life.²⁸³ As the scene ends, Boq screams and clamors off stage. And the final words of this scene are those of Nessarose pleading for him to stay, “Boq, please listen! It was Elphaba! Boq! It was Elphaba!!!”²⁸⁴

But was it Elphaba? While *The Wizard of Oz* fans are given a curious and creative version of the Tin Man’s genesis, it is Elphaba’s thematic goodwill that is revealed when we view the conflict and specific issue both from Nessarose’s and Elphaba’s vantage point. Interestingly, Nessarose frames the issue in a few ways: first, whether Elphaba should use her powers to help her sister instead of others, and second, whether Elphaba can save Boq’s heart. But as the scene ends, we see that even when Elphaba resolved Nessa’s first issue, by using magic to enable her to walk, and the second issue, by fixing the mess of Boq’s heart, which Nessarose actually created, neither were good enough. So Nessarose’s issues are arguably narrow-minded. But from Elphaba’s vantage point, an entirely different issue is presented—one largely concerning her sister’s heart and whether anything that Elphaba could ever do would be enough. Likely not. And because the audience can see more clearly what Nessarose cannot, Elphaba, this “wicked witch,” becomes the hero at the end of this scene, and we can empathize with her accepting the limits of that relationship and leaving.

The theme of goodwill is one that prevails not only in this scene but throughout Act II. Goodwill toward others comes naturally for Elphaba, and she is incredibly sensitive to the boundaries between her goodwill and others’ free will. For example, she made it clear from the start that she sought both her father’s and sister’s help in rescuing the animals that have been captured in Oz. But when Nessarose criticizes her intentions as misplaced, Elphaba shifts her own goodwill focus to instead advance her sister’s free will by helping her walk again, with whatever power she can muster. Before the dust can settle on Nessarose’s miracle, however, Boq also questions Elphaba’s goodwill, and in a final gesture to help her sister restore a lost love, Elphaba spares Boq’s body, though she could not save his soul. Perhaps most telling of her sensitivity to the boundaries between her goodwill and others’ free will is her final words to her sister where she acknowledges that nothing she can ever do would be enough for her sister.

The discussion of the various issues from each character’s vantage point, and the larger theme of goodwill, is used to draw the point of the power that can rest within the conscious of the Analytical Framework. By comparison, a novice law student in drafting the “I” (Issue) of IRAC may only replicate a singular view of the issue as stated by a supervising attorney, a client, or as framed by a judicial opinion. The richness of the Framework, however, invites and encourages the audience (i.e., writer) to step back, observe all the characters, and consider the issue/conflict as they see it. It may be that a reframing of a seem-

²⁸³ *Id.*

²⁸⁴ *Id.*

ingly apparent issue raises or challenges additional themes that can have an individual or more global impact. Here, Elphaba's very presence and presumed selfish power were arguably the issues from the perspective of both Nessarose and Boq. But in view of the narrative from Elphaba's perspective, there is a significant theme of Elphaba's goodwill, as opposed to malevolence like her sister; thus, Nessa's heart could also serve as the real issue.

As the Outsider, however, I wonder if Elphaba's viewpoint would have been considered at the outset, and if a white normative paradigm would have given voice to her narrative? I recognize that this is perhaps an advanced and subjective analysis for a first-year law student or even junior associate. Further, I can empathize with the concern of whether a law student or junior attorney should question how an issue is posed. But the difficulty and uncomfortableness of such an inquiry is not a reason to avoid it altogether. In many ways this questioning, this curiosity, this heightened awareness to systems of power, class, or other markers that divide, is no longer an add-on that students can afford to be without in their legal education. By no means should we teach law students to challenge their superior's framing of an issue, but students can learn to provide additional or appropriate context of an issue to discern whether there is a perspective that is lacking, an interpretation that is skewed, or a voice that is missing.²⁸⁵

²⁸⁵ A discussion of expansive issue framing need not be overly complex. For example, I teach my students to consider the context of their issue in light of, what I call, the "Big W"—the Big Win. Consider a California statute that permits certain contracts to be void and unenforceable if they violate public policy. To determine if a contract does in fact violate public policy turns on five factors stemming from a seminal California Supreme Court decision. The particular issue for the student's memo may be to determine if two of those factors are met. I pose to them, what is the issue? To equip them only with IRAC is to end up with "pick of the litter" of issues. That is, some students may say the issue is whether factor one is met. They would be correct. Other students may say the issue is whether factor two is met. They also would be correct. Some may say the issue is whether both factors are met. They too, would be correct. And a small few might view the problem from a more aerial view and suggest the issue is whether the contract is void for public policy. Also correct. How is the "I" of IRAC helpful here? It is not. But by teaching context, perspective, and audience needs and expectations, students can learn that framing the issue so narrowly as whether factor one is met does not lead them to the Big Win. They cannot win (or resolve the problem) on that conversation alone. The problem is whether the contract is void for public policy. That larger overarching issue turns on a few small conversations about the factors. I teach my students to always put themselves in the shoes of the court, the supervising attorney, and critically think whether their audience will know the larger resolve if the student offers "Whether factor one is met" as the singular issue. I have little doubt that many legal writing professors similarly guide their students to recognize both narrow and broad issues. The point is not one of simple issue spotting, but a broader focus on shift in perspective—a novel idea for novice law students.

B. The Scarecrow & Lion: On a Voice for the Voiceless

“[B]ecause legal writing pedagogy reflects the biases in legal language (including legal reasoning), its effectiveness in ‘socializing’ law students comes at the price of suppressing the voices of those who have already been historically marginalized by legal language.” —Kathryn Stanchi²⁸⁶

Who could forget the oversized ball of caramel fur (with soft curls framing his face) who burst fiercely from the forest toward Dorothy, only to retreat in pain when Dorothy slapped him on the nose? And then there was the billowing sack of hay, situated atop a wooden stake surrounded by a golden field, lacking any intellectual dexterity. That was the 1939 portrayal of the Cowardly Lion and Scarecrow, respectively, in *The Wizard of Oz*. As our story moves away from the Tin Man, if there is an essential theme that stems from Elphaba’s interaction with the Cowardly Lion and Scarecrow, it is this: she is compelled to defend those who cannot defend themselves, to be a voice for the voiceless.

The discussion of the Scarecrow and Cowardly Lion together is intentional because through Elphaba’s own narrative, her interaction with the lion cub in Act I reveals the theme of her need to defend the voiceless and serves as a passionate catalyst for reaction toward the Scarecrow’s potential demise in Act II.

Let us start with the Cowardly Lion to discover where he is and when he lost his voice. This revelation actually begins with Boq—now the Tin Man—in Act II. The Tin Man knows where the Lion is. In Scene eleven, Boq has all but led the charge in the hunt for the Wicked Witch of the West. He is just a tad bitter about being turned into tin. As proof of the depraved condition of his own heart (or space where a heart would be), he confesses that as more than a service to the Wizard, he has a “personal score to settle with Elph . . . with the witch!” because she turned him into tin.²⁸⁷ Stepping aside from his own rage momentarily, he adds that he is not the only one that has a bone to pick with Elphaba. As he turns his head offstage, he yells into the darkness, “Oh, come on, you! Come out and tell them what she did to you in class that day. How you were just a cub and she cubnapped you.”²⁸⁸ And in his hidden Broadway debut, a meek shout is heard from the abyss, “no!” To this, Boq turns back to the crowd inciting them that the Lion also has a gripe with the witch because, “[i]f she’d let him fight his own battles when he was young, he wouldn’t be a coward today!”²⁸⁹

²⁸⁶ Stanchi, *supra* note 12, at 9 (adding that “[l]aw is a species of language that some linguists call a ‘language of power’ or ‘high language’—a prestigious type of language that must be used if the speaker is to function effectively and to which only the most powerful members of society have access.”).

²⁸⁷ *Wicked Script*, *supra* note 243, at act II, sc. 11 (“It’s due to her I’m made of tin[,] her spell made this occur[,] so for once I’m glad I’m heartless[,] I’ll be heartless killing her!”).

²⁸⁸ *Id.*

²⁸⁹ *Id.*

For context, we must briefly return back to Act I, during Elphaba's college days where her personal relationship with her professor, who is himself an outsider, is really the fuel behind her crusade for marginalized voices. Briefly, her professor Dr. Dillamond, a talking goat (which could only happen in a musical of course), had been fired from the university because animals were no longer permitted to teach and were being silenced.²⁹⁰ After Dr. Dillamond informs the class of his departure, a new professor, a human being and insider, attempts to offer some semblance of understanding to the students. The new human professor is pointing to a cage on stage as he begins to speak, assuaging the students' concern that the changes in Oz are ringing with the "silence of progress."²⁹¹ He slowly moves to pull the cloth off the cage revealing a lion cub inside, and remarks, "[n]ow, we will be seeing more and more of them in the near future. This remarkable innovation is actually for the Animal's own good"²⁹² While some of the students seemed intrigued, Elphaba questions whether "this is for his own good," as she and the other students watch the lion cub tremble.²⁹³

Adding to the theme of goodwill, Elphaba's narrative in this scene highlights her championing the burden of the voiceless. Perhaps it was her collegial relationship with Dr. Dillamond—that they could relate as marginalized citizens of Oz—or her outrage at the new professor's implication that there were actually "benefits of caging a [l]ion cub," namely that "he never, in fact, will learn to speak[.]"²⁹⁴ which fueled her social justice movement to rescue the animals. Whatever it was, she must have felt pressured to help because she and Fiyero grabbed the lion cub from the classroom and ran away in efforts to free him.²⁹⁵ Perhaps a bit unsure of the wisdom of Elphaba's defense of the Lion, or himself as being an accomplice to her actions, Fiyero comments that Elphaba is always "causing some sort of commotion."²⁹⁶ Her response is telling that her support is more of a distressing burden she must carry versus any drive toward some loftier version of herself. She proclaims, "[o]h! So you think I should just keep my mouth shut! Is that what you're saying? . . . Do you think I want to be this way? Do you think I want to care this much? Don't you know how much easier my life would be if I didn't?"²⁹⁷

Before moving to the parallels between Elphaba's interaction with the Cowardly Lion and the Analytical Framework, let us visit the Scarecrow, whose voiceless story requires a bit of a passage through Elphaba and Glinda's relationship. *Wicked* transports us back before the timeline in *The Wizard of Oz*

²⁹⁰ *Id.* at act I, sc. 11, sc. 6.

²⁹¹ *Id.* at act I, sc. 11.

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ *Id.*

and introduces us to Fiyero, the hunky new boy in town and college classmate of Glinda.²⁹⁸ Of relevance, I promise, at the end of Act I, Elphaba has found her courage to challenge all of Oz and is essentially trying to avoid being captured. [And as a side note, in the love triangle (or quadrangle) between Nessarose after Boq after Glinda after Fiyero, Fiyero is now intrigued by Elphaba, naturally]. In Act II, as an attempt to lure Elphaba back to Oz to capture her, and admittedly a bit perturbed over losing Fiyero's heart, it is Glinda who suggests for the town to trick Elphaba into believing her sister is in trouble [see, Act I's love quadrangle is very relevant].²⁹⁹ And the trick? Probably one of the most well-known movie scenes of all time—Dorothy's house dropping on the Wicked Witch of the East, Nessarose. When Elphaba rushes to Oz only to find her sister dead, she encounters Glinda supposedly mourning over Nessarose's death.³⁰⁰ After a brief exchange of words with glares, between once enemies, turned friends, and now enemies again, the guards appear to capture Elphaba.³⁰¹ As Elphaba struggles to get free, the hunky love-triangle college-boy-turned Captain of the Guard appears and commands that the other guards let Elphaba go or he will kill Glinda.³⁰² After Elphaba is released and tries to leave with Fiyero,³⁰³ Fiyero is then seized.³⁰⁴ As the plot thickens on the greatest love triangle Oz has ever seen, the fate of Fiyero results in yet another visionary genius moment for fans of *The Wizard of Oz*. The scene ends with a second guard yelling for Fiyero to be taken to a nearby field and placed on a "poles until he tells [them] where the witch went."³⁰⁵

In the next scene Elphaba's instinctive ache and fight for the defenseless is revealed. In her musical monologue the accompanying score is so fast you can almost feel Elphaba's heart race as she drops to the floor and begins chanting frantically from her book of spells. And in between the indiscernible incantations, she pushes out her plea in English that gives the audience a gripping look into her pain, "let his flesh not be torn let his blood leave no stain, will they beat him, let him feel no pain . . . let his bones never break and however they try to destroy him let him never die, let him never die!"³⁰⁶ If you have not seen

²⁹⁸ *Id.* at act I, sc. 7.

²⁹⁹ *Id.* at act II, sc. 5 (noting it was Madame Morrible, (former Head of Shiz and now the Press Secretary) who takes it too far).

³⁰⁰ *Id.* at act II, sc. 9.

³⁰¹ *Id.* In case you are curious, part of Elphaba's irritation with Glinda in this scene is that when Elphaba arrives, Glinda is waving Dorothy off as Dorothy skips down the Yellow Brick Road wearing the infamous red shoes. To which Elphaba remarks, "I wanted something to remember [Nessarose] by, and all that is left were those shoes, and now that wretched little farm girl has walked off with them. So I'd appreciate some time, alone, to say goodbye to my sister." *Id.*

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ *Id.*

³⁰⁵ *Id.*

³⁰⁶ *Id.* at act II, sc. 10.

the musical, the moment where she desperately tries to save Fiyero (her love interest) is incredibly powerful. When I close my eyes and visualize this scene live on stage, the lights are dim with a shallow spotlight on Elphaba who is slouched on the ground, her back to the audience, and she is almost shaking as she rocks back and forth over her spell book. You can feel the intensity of her pleas from the orchestra box to the balcony. Eventually the Guards capture Elphaba when they find her with Dorothy . . . still trying to get those red shoes,³⁰⁷ after which Elphaba accepts her fate (the infamous scene where Dorothy dumps a water bucket on the witch's head).³⁰⁸

And what became of Fiyero who was placed on a pole in a field? In the final scene as the Ozians are singing a modern twist on the classic "Ding Dong the Witch is Dead,"³⁰⁹ Fiyero, to the shock of the audience, appears on stage as the Scarecrow. He bends down, knocks on a trap door on the stage floor, and says, "[i]t worked!"³¹⁰ In what is one of the best *Wicked* reveals, in my opinion, the trap door opens and out climbs Elphaba, who looks at Fiyero and touches his straw face, saying, "Fiyero! I thought you'd never get here."³¹¹ You can hear the cheers explode in the audience, which barely quiet down enough to hear Fiyero respond, "[g]o ahead, touch, I don't mind. Ah, you did the best you could. You saved my life."³¹²

Now we come full circle on the comparisons between Elphaba's interactions with the Cowardly Lion and the Scarecrow. Out of her passion-filled rambling and incantation to save Fiyero's life, we can see remnants of her passion-filled cubnapping of the Cowardly Lion during her time in college. Contrary to Fiyero suggesting that she is always causing a commotion, it is imaginable that her actions stem from her natural instincts to protect. In fact, she appears frustrated that she "care[s] this much" about ensuring there is justice in Oz for all the voices, including the animals. This stance is not arguably one she signed up for, but one she feels compelled toward even in view of opposition by an entire community. I found myself pausing at her words to Fiyero, "[c]an you imagine a world where Animals . . . never speak?"³¹³ And we cannot let it slip that the Tin Man (Boq) suggests that if Elphaba had let the Lion "fight his own battles," he would not be a coward today. But the lion cub was grabbed and caged by a governing body who touted the caging and silence of all the animals as a "remarkable innovation" that was somehow for their own good.³¹⁴ The irony is hopefully not lost as to how many global communities this sentiment metaphorically rings true for.

³⁰⁷ *Id.* at act II, sc. 13.

³⁰⁸ *Id.*

³⁰⁹ *Id.* at act II, sc 14.

³¹⁰ *Id.*

³¹¹ *Id.*

³¹² *Id.*

³¹³ *Id.* at act I, sc. 11.

³¹⁴ *Id.*

If we allow Elphaba's heart ache for caring so much to be the lens through which we view her spell for Fiyero, the integral nature of her need to champion for those who cannot fight for themselves is palpable, despite any clear or logical process for doing so. She literally makes no sense when she cries out to save Fiyero, toggling furiously between unclear incantations and English. If he bleeds, she cries for there to be no stain, for his bones not to break as they beat him, that he never dies. In our finite minds, how is any of that possible? The point is that her need to try, her need to speak out even if it was ridiculous or hopeless, outweighed any thought of being silent. For both the Cowardly Lion and the Scarecrow, it was *her* voice and actions that saved them from a lesser state, or at the very least ensured their personhood was not rendered invisible. We cannot always say as much about the law. The law, as represented by federal and state constitutions, legislation, and judicial opinions is a static fixture that, at best, can capture the vision of a progressive society,³¹⁵ and at worst, memorialize its darkest moments.³¹⁶ And as time ebbs on, and tomorrow be-

³¹⁵ See, e.g., *Jamison v. McClendon*, No. 3:16-CV-595-CWR-LRA, 2020 WL 4497723, at *9, *11, *28 (S.D. Miss. Aug. 4, 2020). This is a 2020 incident where Clarence Jamison, an African American man, had purchased a 2001 Mercedes-Benz convertible and was pulled over by a "White" officer, Nick McClendon, because the temporary car tag was folded over and not visible to the officer. *Id.* at *3. Yet after the background check "came back clear immediately[.]" the officer still ran a criminal history on both Jamison and his car. *Id.* After asking five times to search the vehicle, Jamison relented because the "officer refused to listen" to him that there was nothing in his car. *Id.* at *4. The officer later admitted that he lied about having received a phone call about cocaine being in Jamison's car. *Id.* at *3-4. The stop lasted nearly two hours and included the following assertions: the car was stolen, Jamison did not have insurance, and the officer deployed a drug dog. *Id.* at *5. Ultimately, the officer admitted he did not find anything suspicious. *Id.* While it was determined that qualified immunity protected Officer McClendon's reasonable suspicion to stop the car, Jamison presented a motion to determine if qualified immunity was appropriate on Jamison's lack of consent and prolonged stop claim. *Id.* at *6. The court's opinion leaned on the history of the Civil Rights movement, the history of 42 U.S.C. Section 1983—born from the failure of the South to cope with the violence from the Ku Klux Klan—and the twentieth century Supreme Court's limitation of the scope and effectiveness of Section 1983 through the qualified immunity doctrine, which has resulted in a multitude of harms. *Id.* at *7, *9, *11. It concluded, in part, that it would "not be fooled by legal jargon. Immunity is not exoneration. And the harm in this case to one man sheds light on the harm done to the nation by this manufactured doctrine. As the Fourth Circuit concluded, 'This has to stop.'" *Id.* at *3.

³¹⁶ Compare *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting), *overruled* by *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954) ("The white race deems itself to be the dominant race in this country. And so it is, in prestige, in achievements, in education, in wealth, and in power. So, I doubt not, it will continue to be for all time, if it remains true to its great heritage, and holds fast to the principles of constitutional liberty. But in view of the constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our constitution is color-blind, and neither knows nor tolerates classes among citizens."), with *Jamison*, 2020 WL 497723, at *21 ("A reader would be forgiven for pausing here and wondering whether we forgot to mention something. When in this analysis will the Court look at the elephant in the room—how race may have played a role in whether Officer McClendon's actions were coercive? Jamison was a Black man driving through Mississippi, a state known for the violent deaths of Black people and others who fought for their freedom. . . . For Black people, this isn't mere history. It's the present.").

comes today, and today becomes history, who is to say how many caged lion cubs were overlooked and not set free, thus figuratively losing their ability to speak by not being represented in the law?

The IRAC paradigm wholly eliminates an explicit directive or implicit sense to consider whether reliance on the past, i.e., analogical reasoning, would be helpful in illustrating the parameters of a particular rule. Yet, the Analytical Framework is constructed at the outset to encourage students to view the whole of the legal analysis through a particular lens, such as cultural, indigenous, rhetorical, social, or economic justice. And in view of the chosen framework, the student engages with certain considerations at every stage of the analysis—which, over time, can become intuitive (*e.g.*, viewing precedent for gaps in representation or voice, or limitations in controlling law). It is not that the Analytical Framework inserts a stream of consciousness that structurally uproots the need for an issue, rule, analysis, or conclusion, as is common in legal discourse. Rather, for novice law students, the Framework removes the formulaic strait-jacket and welcomes a healthy interrogation of the law to consider whether the current law (which can still be decades old) reflects today's voices or concerns.³¹⁷

The elephant in the room, to me, is examining whether we are so tethered to “objective” writing that we are paralyzed with fear to depart from this traditional route, and whether this fear is suffocating us as professors and our students. If we seek creativity and depth, consideration of many viewpoints—yes, *even in a legal memorandum*—can we continue to leave our human self and all our multi-faceted identity aspects out of the writer's pen?³¹⁸ Does the law require us to? To this point, the work of Arthur Miller is instructive as he challenges this “myth of objectivity in legal research and writing.”³¹⁹ He writes:

What this proposition means, in essence, is that the very reasoning process of lawyers, including judges and law professors, is from conclusion to premise rather than a logical deduction from major premises to conclusions. At the very best, legal reasoning depends on choices to be made from basic value premises, choices that quite often (perhaps usually) can only be personal and essentially

³¹⁷ See, *e.g.*, *McClendon*, 2020 WL 4497723, at *2–3, *12–13, *17 (2020 federal case judicially challenging the limits of qualified immunity for law enforcement); Sonia M. Gipson Rankin, Technological Tethereds: *Potential Impact of Untrustworthy Artificial Intelligence in Criminal Justice Risk Assessment Instruments*, 78 WASH. & LEE L. REV. (forthcoming 2021) (manuscript at 2–4) (arguing against the use of AI in criminal justice reform because the court has “yet to address legal issues caused by likely hacked artificial intelligence,” and “without transparent safeguards to ensure that data sources have not been manipulated,” African American people and other people of color will be disproportionately harmed), <https://ssrn.com/abstract=3662761> [<https://perma.cc/D5TZ-X276>].

³¹⁸ I continue to be drawn to the *McClendon* opinion, where the court asked, “When in this analysis will the Court look at the elephant in the room—how race may have played a role in whether Officer McClendon's actions were coercive?” *McClendon*, 2020 WL 4497723, at *21.

³¹⁹ Arthur Selwyn Miller, *The Myth of Objectivity in Legal Research and Writing*, 18 CATH. U. L. REV. 290 (1969).

arbitrary. . . . In whatever type of dialogue that is conducted, including law, the personal valuations of the actor unavoidably are part of his presentation.³²⁰

In other words, why is objectivity the standard, aloof elimination of human connection to the law?³²¹

Return with me briefly to the scene where Elphaba is tricked into returning to Oz to mourn for the loss of her sister. Being dubbed a “wicked” fugitive on the run, she is captured by the guards. When Fiyero, coincidentally the Captain of the Guards, commands his own men to let Elphaba go at the potential risk of Glinda being harmed, it is Fiyero who is then seized. Perhaps the Ozian law requires extinction for anyone who threatens royalty. But can we see the short-sightedness of a law that fails to hear marginalized voices and human experience? This “law” not only ignored the actual victim, but it was unable to cast any other character as deserving of being heard. Glinda, the only victim the law actually seemed to protect, was *ignored* when she sought a different outcome. Fiyero was *left for dead* when he took a stand against a system that ignored one of its own community members. And Elphaba, as the unquestionable Other in this scene, having been lured under false pretenses, *never had a chance to speak* to defend herself. It is telling that not only do both people in privileged positions (Glinda, as royalty, and Fiyero, as law enforcement) tell Elphaba to run away, but their own privileged statuses could not even reason with the law on its own terms. Is the law that untouchable?

Whether the law is right or wrong is actually the lesser concern to whether it can give voice to human experience. A critical Analytical Framework offers the starting point for where the law is on a particular principle, but it is also malleable enough to consider how that principle has been represented, interpreted, modified, and so forth. Thus, to the extent the law fails to account for a new voice or human experience, the Analytical Framework can empathize and is comfortable raising that point too.³²²

For Elphaba, she often seemed burdened by her own complexity throughout her life but nonetheless walked in her calling toward defending the welfare of the defenseless. When a law student gains comfort in critically evaluating the law and how to configure it in a narrative way—to lessen, modify, expand,

³²⁰ *Id.* at 293, 298.

³²¹ *See id.* at 299 (“In the words of Karl Mannheim, the ‘type of objectivity [that is attainable] in the social sciences [and presumably this has to include law] is . . . not through the exclusion of evaluations but through the critical awareness and control of them.’”). I recognize that Miller’s article discusses legal scholarship at some length, whose audience is admittedly different than a legal client; but Miller also takes care to discuss the myth of objectivity as it relates to judges that have taken the bench after years of practice and speaks broadly of lawyers. Miller’s broader focus concerns the objectivity in legal research and writing and the myth that research and writing about “legal matters can be free from value judgments of the writer or commentator. . . . The requirement, in sum, is to perceive that not only is objectivity unattainable, but that it is not even desirable.” *Id.* at 291–93, 304. Thus, I argue his proposition has applicability for law students, and perhaps even more so, that they gain awareness of a human connection to the law at the outset of their legal education.

³²² *See supra* notes 317–18 and accompanying text.

or maintain a general rule—I think they are freed from needing to be perfect in their exposition of it. Elphaba was certainly not perfect in her spell to try to save Fivero, nor in her rescue attempt of the Cowardly Lion. And to say she lacked privilege would be an understatement. But she was the only voice that took a stand for the welfare of others, and it certainly earned her the love of the audience in the end. Similarly, the law is arguably forced to listen to the other voices that may come to its door bearing no privilege. I do not suggest that novice legal writers engage in a “let me decide if I like the law and want to use it” approach when engaging with constitutions, statutes, or precedent. Even the most free-spirited of us lawyers (and I count myself in that rank) can respect the need for borders that separate the objectives of varying professions. But once students learn the general rule of law in its current state, who is to say society is better for accepting “limits ‘cuz someone says they’re so.”³²³ Even the Wizard of Oz himself is worthy of being challenged for the greater good.

C. *The Wizard: On Dismantling Power*

“What we have to recognize is that the creation of the fiction of tradition is a matter of power, not justice, and that that power has always been in the hands of men—mostly white but some black. Women are the disinherited.”—Mary Helen Washington³²⁴

Finally, we come to the great and powerful Wizard of Oz. Literary history knows him well: the small mortal man who hid behind a curtain while electronically projecting on a screen an obnoxiously oversized bald green head whom the crowd believed possessed magical powers. That was the 1939 portrayal of the infamous Wizard of Oz. Like the stories before, fast forward a few decades to *Wicked*, and we are transported back in time and introduced to the Wizard, the leader of Oz, who—unknown to Elphaba—is actually her father.³²⁵ (This was the biggest cinematic reveal since Darth Vader as Luke Skywalker’s father, again, in my opinion).

The theme that prevails from Elphaba’s interaction with the Wizard is quite simple: The Wizard is a corrupt power structure that must be dismantled. This was Gregory Maguire’s goal when he wrote *Wicked*. When Maguire was interviewed about his inspiration for *Wicked*, he essentially sought out to show the

³²³ *Wicked Script*, *supra* note 243, at act I, sc. 17.

³²⁴ Washington, *supra* note 37, at 32.

³²⁵ *Wicked Script*, *supra* note 243 (noting in Act I, Scene 1, the birth of Elphaba stemming from an affair between the Wizard and Elphaba’s mother, where the Wizard gave her mother a green potion prior to Elphaba’s birth, and Act II, Scene 13, where Glinda gives the same green bottle to the Wizard after Elphaba left Oz, informing the Wizard that Elphaba always carried it with her).

more sinister side of the Wizard, an aspect the 1939 movie failed to do.³²⁶ He stated that he

began thinking about the story of ‘The Wizard of Oz’ when [he] was about 5[.] . . . The witch scared me, sure, but so did the wizard. What really frightened me was that he *confessed* to doing terrible deeds. In the film Dorothy says, ‘You’re a bad man’ and he says, ‘No, I’m just a bad wizard.’ And Dorothy just simpers and that’s the end of the conversation. But she should have said, ‘Excuse me, are you listening? Read my lips. You are a bad man.’³²⁷

In the 1939 film, *The Wizard of Oz*, the Wizard first appears as an older white man, a traveling magician, who Dorothy meets on the road when she runs away from her terribly perfect life. After this brief interaction between Dorothy and the magician, we do not see him again until the end of the film, when Dorothy and her friends—the Scarecrow, Tin Man, and Cowardly Lion—try to get help in sending Dorothy back home and appear before the Wizard, a larger-than-life green bald head projected on a screen. Fans of the film know how this story ends. The Wizard makes the group prove themselves by killing the Wicked Witch of the West, and when they do, he still denies their requests. Irritated, by an already long journey and now this broken promise, Dorothy manages to uncover the small modest man—coincidentally the traveling magician—hidden behind the curtain feigning real power. Classic.

Fast forward to 2003, and the Wizard appears in the opening scene as the “Lover” of Elphaba’s mother, while her father was away on business.³²⁸ And it was this Lover that provided her mother with a peculiar green drink that set Elphaba’s life on a difficult course from birth.³²⁹ When Elphaba begins her college studies, Madame Morrible, the director of Shiz University, learns that Elphaba has magical powers and takes a personal interest in her.³³⁰ In this moment Elphaba’s powers, which have previously caused her grief, are reimagined as she is told that her talent is a gift and her gift can help her meet the Wizard so long as she “make[s] good.”³³¹ Thus, the desire to meet the Wizard begins, as does her singular focus to be good so that the Wizard might “de-greenify” her one day.³³²

Most systems of power do not begin corrupt; it can often be a slow fade that answers the call of greed. Such was the case with the Wizard. At the end of Act I we catch a glimpse of the Wizard’s true intentions. Now great friends,

³²⁶ Rizzo, *supra* note 26 (“And that was the point Maguire’s revisionist look at the tale began, he says, one in which he presented a sympathetic perspective to the Wicked Witch of the West and a more sinister one for that man behind the curtain. Maguire’s was a much more complicated, nuanced and human story than what was portrayed in either the 1900 book by L. Frank Baum or the 1939 movie musical.”).

³²⁷ *Id.*

³²⁸ *Wicked Script*, *supra* note 243, act I, sc. 1.

³²⁹ *Id.*

³³⁰ *Id.* at act I, sc. 2.

³³¹ *Id.*

³³² *Id.* at act I, sc. 3.

Glinda and Elphaba have come to the Emerald City to see the Wizard. As the two young ladies stand trembling before the incredibly large head, flashbacks of the 1939 Dorothy and her friends are likely racing through the audience's mind. The Wizard is delighted to meet Elphaba, and stepping from behind the large head he remarks that he "hardly ever let[s] people meet the real [him]," because "people expect this sort of thing[, and] [y]ou have to give people what they want."³³³ And most of all, he loves making people happy.³³⁴

Making people happy seems the appropriate life goal for a magical wizard, does it not? Or for any privileged system for that matter. But lest we take comfort that we can leave Elphaba safely in the hands of the Wizard where all of her proverbial hopes and dreams will come true, we quickly learn that "making people happy" comes at a cost. When Elphaba reveals that she has come to him because something bad is happening to the animals in Oz, the Wizard asks her to prove herself with some sort of gesture—"something to test her adeptness."³³⁵ And right on cue, Madame Morrible enters the scene, to the shock of Glinda and Elphaba. She is the new Press Secretary who has "risen up in the world," and comments that, "[y]ou'll find that the Wizard is a very generous man. If you do something for him, he'll do much for you."³³⁶ The air is thick with the stench of *quid pro quo*.

Nervously asking what the Wizard wants her to do, Elphaba is handed the infamous book of ancient spells.³³⁷ Offhandedly, as if they just thought of the idea, the Wizard and Madame Morrible "suggest" Elphaba use the book to conjure up a levitation spell so that the Wizard's servant monkey, Chistery, would be able to fly with the birds in the sky, which the Wizard believes he desperately seeks to do.³³⁸ As Elphaba begins chanting, the Wizard appears delighted at the forthcoming experience for the monkey, remarking that "everyone deserves the chance to fly!"³³⁹ But when the monkey begins to scream, Elphaba stops, and seeing the monkey writhe in pain because wings painfully sprout out of his back, she cries out asking how she can reverse the spell.³⁴⁰ Sadly, she cannot, to the obvious delight of the Wizard and Madame Morrible.³⁴¹

Their plan from the beginning was to use Elphaba's power to turn the monkeys into spies, to have them fly around Oz and "[r]eport any subversive Animal activity."³⁴² This scheme was not one Elphaba was prepared for, as she remarks, "You can't read this book at all! Can you? That's why you need ene-

³³³ *Id.* at act I, sc. 15.

³³⁴ *Id.*

³³⁵ *Id.*

³³⁶ *Id.*

³³⁷ *Id.*

³³⁸ *Id.*

³³⁹ *Id.*

³⁴⁰ *Id.*

³⁴¹ *Id.*

³⁴² *Id.*

mies, and cages, and spies. You have no real power,” to which the Wizard sinisterly replies, “Exactly . . . that’s why I need you.”³⁴³ The slow fade to corruption has begun (or continues). While Act I reveals the Wizard’s sinister plot to take over the world, well . . . at least Oz, Act II renders his entire character repugnant.

This battle with the Wizard is Elphaba’s largest challenge yet. Her prior interactions with the Tin Man, the Cowardly Lion, and the Scarecrow warmed our hearts toward her—we could see that she had been misjudged, and that she was a champion for the voiceless. But what does she gain by challenging the Wizard of Oz—the voice and protector of the people? If she is wrong about him, the public’s sentiment toward her as “wicked” will be cemented in history. And if she is right, who would care? She will have exposed a fraud that everyone else seemed comfortable being blinded by.

Unmoved by the odds, in Scene four, Elphaba appears again before the Wizard proclaiming her intent to set the monkeys free, and this time she is far less naïve about his supposed wonderfulness. The Wizard’s response is subtly seductive. In one of the few musical monologues the Wizard has, his score, titled “Wonderful,” in many ways resembles Glinda’s score “Popular,” in Act I. Both songs make us question the rise to their privileged status positions, and to the critical part in us, how Glinda and the Wizard comfortably rested in their unearned positions. This is the blind spot of privilege. During his song the Wizard reveals that he never asked to be the Wizard, that he was “blown here by the winds of chance.”³⁴⁴ In fact, he calls himself a “dime a dozen mediocrates,” who out of nowhere was “respected, worshipped even just because the folks in Oz needed someone to believe in.”³⁴⁵ Perhaps we cannot fault the Wizard from getting carried away; after all, he was called “wonderful”—they thought he was wonderful.³⁴⁶ Elphaba is mesmerized by his narrative, and for a brief moment he dances around and lures her in with the possibility of being deemed wonderful by the masses.³⁴⁷ And can we blame her? Power, privilege, status is at her fingertips, and she drinks the Kool-Aid on the singular condition that the Wizard set the monkeys free.³⁴⁸

As the energy of the music increases, the Wizard opens the cage door and many of the monkeys fly away.³⁴⁹ With delight, Elphaba cheers, “Go! Fly! You’re Free! Fly! Chistery, Chistery, you’re free, isn’t it wonderful?! Go, fly!”³⁵⁰ As she makes her way to what she believes is another monkey covered by a sheet, the Wizard tries to stop her, but she pulls off the cover to reveal Dr.

³⁴³ *Id.*

³⁴⁴ *Id.* at act II, sc. 4.

³⁴⁵ *Id.*

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ *See id.*

³⁴⁹ *Id.*

³⁵⁰ *Id.* act II, sc. 5.

Dillamond, her former college professor.³⁵¹ He is huddled up and scared, and simply looks at Elphaba and says, “Bahhhhh.”³⁵² He cannot speak. The dancing has stopped. In complete rage, but with a resolute voice, Elphaba looks toward the Wizard and sternly says, “No . . . We have nothing in common. I am nothing like you and I never will be and I will fight you until the day I die!!!”³⁵³ Whether she has weighed the cost of her statement or even cares is unclear. But fight him she will.

The famed Wizard of Oz, this iconic power structure, is not so wonderful as his glowing resume reveals, circa 1939 and 2003. He is a white middle-aged businessman, a self-proclaimed “mediocrites,” who had an affair, was unaware he had a child, and who was presumed competent enough to govern an entire community because he was in the right place at the time. And having done nothing of substance to earn this position of supreme power, he makes those less fortunate do his dirty work to prove their worth for his resources. Oh, and how he lies, easily and often. Whether power and dominance created this wickedness, or the wickedness had the space to finally be released due to power and dominance, we can only guess. But what is clear, and disheartening, is that the citizens of Oz needed “someone to believe in.”³⁵⁴ Isn’t it wonderful?

I am almost at a loss of words in highlighting the inadequacy of IRAC to assist students in dismantling systems of power. I jokingly tell my students that the way they earn their money as lawyers is through the application of the law to the facts, that everything else the client can Google. I believe this is true. Even still, for law students tethered to IRAC, the deductive reasoning required to apply law to the facts is likely a systemic process of looking at one element, determining whether our facts satisfy that element—yes or no—and moving on to the next consideration. Yes, we take care to teach students how to locate the law, and as previously discussed, to consider how the law has been interpreted, modified, and so forth. But the implication of that law for a specific client is not easily spelled out for them, and this can be a space of heightened resistance. It is human nature to want to be right, and for novice law students, being right often means to mimic something that was deemed “right” before, and if the client’s facts align with the precedent, the client is right; and if the facts do not so align, the client is wrong. End analysis. If the existing law, however, has not only failed to include particular voices, but, like the master plot of the Wizard and Madame Morrible, is actually intended to preserve a status inequity, is it so wicked to challenge it? This is the very reason many students come to law school—to use the law to change systems of inequality.

The Analytical Framework allows students to push against inequities.³⁵⁵ It permits law students to consider, if appropriate, counter-analysis and policy

³⁵¹ *Id.*

³⁵² *Id.*

³⁵³ *Id.*

³⁵⁴ *Id.* act II, sc. 4.

³⁵⁵ See *supra* notes 317–18 and accompanying text.

considerations where the law itself perpetuates a harm to an individual or community. Is there an injustice that is being advanced in the name of goodwill? A discrimination that is being cloaked in equality? In *Wicked*, the law prevented the animals from speaking, and the government worked to enforce that law by any means necessary. A rote application of that law to Chistery (the monkey), Dr. Dillamond (goat), or any other animal, resulted in the obvious conclusion that they were to be captured and silenced—and if caging them furthered that objective, so be it. To push against this law is to push against the system that created it, and Elphaba accepted the consequence of her decision. But a similar decision is a tall order not only for law students, but lawyers alike. Whether to push is a moral and value-driven choice, but the intellectual space to do so is within the boundaries of the Analytical Framework.

Helpful in supporting a push, in *Whites Will Be Whites: The Failure to Interrogate Racial Privilege*, John A. Powell suggests that where

responses to the power structure are available [they] should be implemented, even if they do not represent a complete solution. The search for a total solution not only should not stand in the way of action. It also should be built on a consciousness that attempts to abandon systems that altogether cannot leave the Other “intact.”³⁵⁶

Being an Other is difficult in a dominant society.³⁵⁷ Elphaba understood that all too well. I would argue that one of the hallmark features of the legal profession—if not at its inception, then in this current age of cultural globalization—is to use critical analysis to challenge dominant structures in view of bringing equality to Other, or non-dominant groups. Consider the various civil rights and liberties that have been granted to traditionally marginalized communities because someone was brave enough to use a creative framework to dismantle unequal systems of power. The legal profession could use a few more green-skinned people.

We have now come to the end of the road, although not the yellow brick one. And it is my hope that the untold narrative of the Analytical Framework has come alive through the life of Elphaba and her interaction with the other famed characters from *The Wizard of Oz*. As Act II demonstrates, if given the

³⁵⁶ Powell, *supra* note 49, at 426–27 (discussing a visibility approach used by Ruth Frankenberg).

³⁵⁷ While beyond the scope of this Article, for a critical examination of how law students who are Others are affected by legal writing pedagogy, see Stanchi, *supra* note 12, at 37–38. (“[T]he existence of a wide gap between personal and professional opinion means that the part of the writer’s identity that causes the gap is not ‘professional’ and has no place in the law. When that part of the writer’s identity is the writer’s outsider status, whether race, ethnicity, gender, or sexual orientation, the outsider status is what is devalued—it is that part of the writer’s ‘I’ that is expunged. The teaching of objective writing exacerbates this because it teaches that the information that belongs in the memorandum is professional and therefore, valued. This means that any other opinions are devalued, and the experiences on which the opinions are based are not the norm. The social method of acculturation contributes to this by imposing, and therefore valuing, the existing legal language and culture and expunging, and therefore devaluing, any competing language and cultures.”).

chance, the Analytical Framework can shift what is the heart of the issue, as seen through the Tin Man; it can provide a voice for the voiceless, as seen through the Scarecrow and Cowardly Lion; and—if it dares—it can dismantle power structures, as seen through the famed Wizard himself.

EPILOGUE

In view of the broader theme of this Article, if there is one aspect of Elphaba's narrative that I would change, it is this: when she tells Glinda that she, Elphaba, is limited. As an audience we have been invited to learn about Elphaba's birth, her dysfunctional family, her formative collegiate years, and her relationship with Glinda the Good Witch, the "only friend [she's] ever had."³⁵⁸ In the final scenes where Elphaba and Glinda are together, and Elphaba is ready to surrender to her impending death by water, she implores Glinda to not try to clear her name, and to carry on the work that Elphaba was unable to do.³⁵⁹ As the two friends see each other for the last time, there is a magic and gentleness on stage as they honor the friendship in a tender number titled, "For Good."³⁶⁰ Glinda sings of understanding "that people come into our lives for a reason[,] bringing something we must learn."³⁶¹ And whether that is true she is unsure, but she is unwavering that she is who she is today because of Elphaba—because they knew each other.³⁶² Elphaba shares this sentiment. Knowing the fate that awaits her, Elphaba sings that though they "will never meet again in this lifetime[,] . . . so much of me is made of what I learned from you."³⁶³ As the song ends, they sing in unison, "who can say if I've been changed for the better? I do believe I have been changed for the better. Because I knew you[:] I have been changed for good."³⁶⁴ The lights are dimmed, the screen is drawn between the two friends, and as Elphaba meets her fate downstage, Glinda stands silently upstage.³⁶⁵ For the first time Glinda is alone and vulnerable, and I think the audience appreciates the humility.

In like form to Glinda, the truth is that IRAC standing alone is vulnerable. It is not inept, it is not wholly ineffective, but it is the one that is limited.

Through this work, I sought out to demonstrate that legal writing has an identity. Specifically, that even the legal analysis process is one of identity development and formation. And if legal analysis is dominated by reductive paradigms such as IRAC, novice law students lose the opportunity to further develop their authentic identity. They will miss issues and voices, and if

³⁵⁸ *Wicked Script*, *supra* note 243, at act II, sc. 11.

³⁵⁹ *Id.*

³⁶⁰ *Id.* at act II, sc. 12.

³⁶¹ *Id.*

³⁶² *Id.*

³⁶³ *Id.*

³⁶⁴ *Id.*

³⁶⁵ *See id.*

unobservant, they will replicate existing power structures through their very words. There is nothing wonderful about that.

For a moment I admit, like Glinda, I was caught up in the popularity of IRAC—initially intended as a prompting tool—and its false promise of analytical depth. In a word, I initially loathed it. But then I reflected back on an earlier quote from Gregory Maguire as he reflected on Elphaba’s character: “‘I am good,’ maybe ‘I’m not so good,’ or maybe ‘I’m both.’ I think this question [faces us] every day. What are we doing that’s good and what are we doing that’s bad?’”³⁶⁶ This sentiment grounded me in IRAC’s derivation from the Analytical Framework. If IRAC were personified, I can imagine it saying, “I am good,’ maybe ‘I’m not so good,’ or maybe ‘I’m both.’” Channeling my inner Glinda, it is “confusifying” to say the least. Whether one continues to assert that in the proper context, IRAC can be a *good* guiding tool, I have resolved that any sliver of usefulness is *not so good*. Not only is it unnecessary as an organizational template in view of genre and convention discovery; but it is also harmful as a normative gateway into critical legal analysis and is ultimately ill-equipped to bear the weight of complex issues, marginalized voices, or powers of inequity. Thus, unlike Elphaba, it is IRAC that is actually limited. *It cannot do both*.

And then there is the Analytical Framework. I am sensitive to the critique that the Analytical Framework need not abandon IRAC. That is, the difference in writing ability for the novice law student and the experienced law professor/practitioner compel some to firmly believe that students need a guiding organizational paradigm until their process becomes intuitive. And there is some support for this sentiment at least in the relationship between Glinda and Elphaba. In their final song, Elphaba—the unsuspecting heroine—did not abandon Glinda; in fact, she remarks that “so much of me is made of what I learned from you.”³⁶⁷ But in the space of legal analysis, I disagree. I believe the Analytical Framework can stand alone. In fact, the effectiveness of legal analysis has always depended upon the depth of the Analytical Framework, and a shortcut to remember its depth is not needed. Unlike *Wicked*, where moments before Elphaba’s departure, she insists that Glinda can carry on the work Elphaba was unable to do,³⁶⁸ IRAC can never engage in the work of the Analytical Framework. In truth, it was never meant to.

³⁶⁶ Rizzo, *supra* note 26.

³⁶⁷ *Wicked Script*, *supra* note 243, at act II, sc. 12. To this point of unity, even in the face of apparent conflict, I find the words of Paulo Freire insightful as he maintains that dehumanization of the oppressed is not a given destiny, that

[b]ecause it is a distortion of being more fully human, sooner or later being less human leads the oppressed to struggle against those who made them so. *In order for this struggle to have meaning, the oppressed must not, in seeking to regain their humanity (which is a way to create it), become in turn oppressors of the oppressors, but rather restorers of the humanity of both.*

FREIRE, *supra* note 92, at 44 (emphasis added).

³⁶⁸ *Wicked Script*, *supra* note 243, at act II, sc. 11.

I began this Article challenging IRAC as the arbiter of legal analysis. More pointedly, that because IRAC's rigid, objective, and neutral approach to legal analysis mimics white normativity, its dominant presence is the proof of its privilege and masks the problem of its simplicity. In fact, whether IRAC can be restricted to this supportive role is the larger concern. For example, Glinda was just a college girl whose social class provided her classmates with a modest whiff of privilege—which was inflated due to Elphaba's very presence—and the crowd arbitrarily chose to call one *good* and the other *bad*. Further, the Wizard, an admitted mediocre person, was likewise catapulted to power and privilege because, once again, the crowd dubbed him good (or wonderful in his case). The crowd's superficiality blinded the masses who could not discern shallowness and depth. When it comes to IRAC, what gatekeeper exists to ensure IRAC remains simply a guiding tool and is not similarly persuasive as analytical depth that holds the “keys to success?” Even if IRAC could remain a guiding tool, I am also weary of suggesting that IRAC's simplicity must be used to introduce students to the Analytical Framework. In this context, the Analytical Framework can stand alone because it invites students to engage in necessary and relevant considerations for the whole of legal analysis from the outset; it does not need to begin with an empty framework. And from a critical identity perspective, it would likewise be damaging to suggest the dominant and privileged voice must be the voice for the marginalized voice. Providing access where real barriers to power exist, yes. But representing a single unified voice, concerning.

While I suspect each person will come to their own conclusions as to the boundaries of the friendship between IRAC and the Analytical Framework,³⁶⁹ I believe nonetheless it is useful to raise the discussion. Of great importance, Elphaba is an Other, a marginalized voice. *Wicked* was her untold story, and the world is better for having learned her story through her own words. Using *Wicked* as a contemporary framework, this Article similarly provided a glimpse of the untold narrative of the Analytical Framework, showcasing its richness and connection to human experience. In the end, I pray our students will appreciate engaging with the Analytical Framework—not because it outshines IRAC—but because they can finally understand the identity formation of the Analytical Framework through its own narrative. Its presence takes us into the deep. And it is not so wicked.

³⁶⁹ I attribute this consideration to Professor Teri McMurtry-Chubb, a scholar in critical rhetoric, discourse and genre analysis, and legal history, who suggests IRAC as a distillation of the analytical framework. That is, IRAC is like the first black and white scenes of *The Wizard of Oz*; IRAC never makes it to the technicolor scenes of *Oz*.