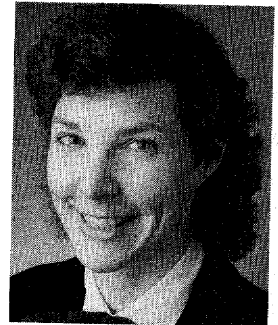


# The Scrivener: Modern Legal Writing



## Road Maps



by K.K. DuVivier

When you write, do your readers know your ultimate destination and how you will get there? Help them trek through your analysis by providing a road map.

A road map for writing is called a thesis statement or thesis paragraph.<sup>1</sup> The name "thesis" comes from the paragraph's purpose: to state your thesis or position on the outcome of the client's prospective case. To be helpful, a road map must include at least three parts: (1) the point of origin, (2) the route and (3) the final destination.

First, begin with the point of origin; show your readers where the analysis is starting by identifying the topic. Start with a topic sentence that lays out the legal claim in either general terms or as it relates to your client.

Second, the road map must show the route to the result. Provide signposts by identifying all the relevant criteria or tests to be discussed. This way, your readers will know the scope of the argument and, if they have anticipated an issue, they will not be distracted wondering if that issue will be discussed. Be sure to include in the thesis all the main criteria for your issue, instead of surprising your readers with an unanticipated intersection later in the analysis journey.

Can you imagine trying to follow road directions given in random order? Readers will best recognize and follow an argument if its presentation is logical. Provide context by showing the organization of the discussion and introducing the issues in the order in which you will present them.

Finally, the road map must show the final destination of the analysis. By stating the thesis or legal conclusion at the outset, the readers will better understand the objective and can evaluate the analysis as it is being developed.

Although every analysis needs some kind of thesis statement to orient the reader, make sure the length is proportionate to the length of your discussion. The argument section, not

the thesis, is the place for citations and extensive discussion of how the legal rules apply to your client's facts. Use the thesis as an organizing paragraph at the introduction of your argument simply by listing the global claims or defenses and their relative strength. Additional thesis paragraphs may be required to introduce each main issue and to lay out the routes, or subtests, for those issues.

If the analysis is straightforward and requires no more than one test, a thesis sentence, rather than a thesis paragraph, may be all that is necessary. The issue and the conclusion can be stated in one sentence. No road map is needed when you are following a single straight road, as long as you know your origin and destination.

The following, from petitioners' brief in *Rust v. Sullivan*,<sup>2</sup> is a good example of a thesis paragraph:

The regulations challenged here violate two well-established limitations on government's prerogative to implement policy choices through a subsidy scheme. [Point of Origin] First, they inject viewpoint-discriminatory controls on speech into a funded dialogue of particular sensitivity. Second, they condition receipt of Title X funds on the relinquishment of private freedom of expression. At stake in this case are the free speech rights of private health care organizations that receive Title X funds, of their staff, and of their patients under these two fundamental principles. . . . [Route] In accepting Title X funds, neither grantees nor the professionals they employ are transformed from private speakers into the "voices of America." [Thesis]

As with any good thesis, this one paragraph represents a summary of the entire argument. With such a map, the readers easily can follow the writer over the route and through the way stations to reach the same ultimate conclusion.

### NOTES

1. Although several writers refer to the thesis paragraph as a "road map" [see, e.g., Pratt, *Legal Writing: A Systematic Approach*

#### DO YOU HAVE QUESTIONS ABOUT LEGAL WRITING?

K.K. DuVivier will be happy to address them through *The Scrivener* column. Send your questions to: K.K. DuVivier, University of Colorado School of Law, Campus Box 401, Boulder, CO 80309-0401.

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113 (Eagan, MN: West Pub. Co., 1989); Charrow and Erhardt, *Clear & Effective Legal Writing* 72 (Boston, MA: Little, Brown & Co., 1986)], I have never seen the road map metaphor expanded to describe the parts of a thesis paragraph. Another effective simile compares thinking through a legal problem with "hacking through a dense jungle. . . . Do not take your reader on such a confused and twisted journey. When you put your thoughts on paper, pave a super-highway straight to your conclusions. Take the reader only where

necessary, and erect clear signposts." Dernbach and Singleton, *A Practical Guide to Legal Writing and Legal Method* 93 (Littleton, CO: Rothman & Co., 1981).

2. Brief on behalf of the appellant, *Rust v. Sullivan*, 111 S.Ct. 1759 (1991), reprinted in, Kurland and Caspar, 206 *Landmark Briefs and Arguments of the Supreme Court of the United States: Constitutional Law* 203 (Bethesda, MD: University Pubs. of Amer., 1991)(citations omitted).

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### 1993 Legal Malpractice Prevention Seminars to be Held January-March

The CBA Professional Liability Committee and Continuing Legal Education in Colorado, Inc. ("CLECI") will sponsor a seminar entitled "Expanding Duties of Attorneys: Effective Risk Management in an Age of Increasing Vulnerability" on four dates in four locations during January-March. The locations and dates are: Denver, January 29; Fort Collins, February 5; Pueblo, February 19; and Grand Junction, March 5.

The seminar will feature San Francisco attorney Ron Mallen, a prominent figure in the legal malpractice field, speaking on the duties and expanding scope of lawyer obligations (live in Denver and taped in other locations); a live panel discussion on conflicts; and a live panel discussion of legal malpractice under the new Colorado Rules of Professional Conduct. The panel members have been recruited from around the state.

The seminar fee for members of the Colorado or Denver Bar Association is \$29. Each attorney attending the seminar is entitled to receive a 3 percent discount on his or her next malpractice insurance premium if insured by the CBA-sponsored carrier, The Home Insurance Company. For additional information, contact Pamela Kenney at the CBA offices: (303) 860-1115 or (800) 332-6736.