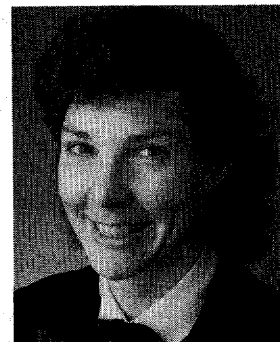


The Scrivener: Modern Legal Writing



Getting Organized: Part II



by K.K. DuVivier

In the July issue [at 1399], *The Scrivener* focused on the usefulness of the IRAC paradigm. This column will address some of the questions students and colleagues have asked about that paradigm and its applicability to large-scale organization in legal writing.

Q. My memoranda seem to disintegrate into series of unconnected paragraphs, each devoted to discussion of a single case. What should I do?

A. Organize your discussion around legal tests and elements rather than around cases. Many writers dump on their readers a chain of digests or mini-briefs to show off all the cases found in the library and to attempt to persuade by the sheer volume of authority. Deploy only as many cases as you really need. If one case is dispositive, discuss that case alone. Do not dilute its persuasive strength by sandwiching it among a slew of other cases.

Furthermore, the cases are only raw materials. From the cases, the writer must extract a rule for that portion of the IRAC paradigm (Issue/Rule/Analysis/Conclusion). The next critical step, which is often omitted, is analysis. In the analysis section, it is the lawyer's job to apply the general rules of law to the specific facts of the situation being analyzed.

Q. If one case addresses several different elements in my analysis, should I discuss it completely in one section of the brief or break up the discussion under the separate elements?

A. Your discussion should emphasize the issues or elements and not the cases. Avoid setting out all the facts and holdings of a case the first time you discuss it. When you are discussing the first issue, set out the case's holding and underlying facts pertaining only to that issue. Then, when you

are discussing the next issue, set out only those portions of the case that are relevant to it. This method allows you to discuss each issue in its own separate section, instead of treating the same issue in several different places.

A case you use frequently in your analysis may be one that you want the court to recognize when it is mentioned for the second or third time. It often helps the reader if you indicate you have discussed the case already and identify the case by using a short name and description (e.g., *Roe*, the Supreme Court abortion case). If the second or third reference to a case is several pages from the first, you may wish to repeat the complete *Bluebook* citation so that the reader doesn't have to search back to find it.¹

Q. If I turn up some information about the historical development of a rule of law, should I include it in my brief?

A. Generally, no. In a few instances, some history of a legal rule may be necessary in a brief or memorandum. However, in most instances, the reader wants to know only what the current law is and how it governs the facts at hand. This is in contrast to the reader of a law review article or treatise, who frequently is seeking some historical background.

Q. When, if ever, should I modify the IRAC paradigm?

A. The IRAC paradigm evolved primarily for fact-based legal problems, and it is an effective way to organize discussion of such problems. If you vary the sequence of the components of the paradigm, consider why. Does the objective for varying outweigh any clarity you might sacrifice in the process?

However, if you are addressing a question concerning the meaning or validity of a law, it is best not to emphasize factual comparisons. With these questions, modify the paradigm to focus on statutory construction, weight of authority, judicial reasoning or underlying policies.

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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Q. What is a good way to organize a discussion that addresses a statute and cases?

A. Consider using an inverted pyramid structure, starting with the general statement of the rule and moving to the specific. For example, if a statute applies, start by quoting relevant portions. The statute itself represents the general statement of the rule. Next, use statements by the courts interpreting the general language of the statute more specifically. Finally, show how the courts apply the rule to specific

fact situations. Thus, the pyramid moves through three levels of focus: from the general—the statutory definition, to the more specific—the court's definition of the statute, to the most specific—a fact-based illustration of the rule.

NOTE

1. The Harvard Law Review Association, *A Uniform System of Citation* 23-24, Rule 4.3 (Cambridge, Gannett House, 14th ed., 1986). Also note that under _____

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