



## CRAFTING MID-LEVEL ORGANIZATION\*

You've split your memo or brief into three points of law. You have decided on a large-scale organization with clear sections and headings. You've focused on small-scale issues, including the structure of sentences and transitions between them. So why is your paper so hard to read? Your sections may need some more attention to *mid-level organization*: the order and proportion of paragraphs and the connections among them. This handout will help you improve mid-level organization by suggesting ways for outlining your arguments, breaking them apart, rearranging them, and putting them back together.

### **Starting the project: How do I know if I need better mid-level organization?**

Recognizing the problem is the first step to crafting cohesive mid-level organization. Ask yourself the following questions to determine if your mid-level organization needs work:

- Are your paragraphs starting to look more like pages?
- Do your arguments repeat themselves?
- Do paragraphs just start without any connection to previous themes?
- Do you get lost? Will your readers?

Any affirmative answer may be a clue that the paper needs more mid-level organization.

To identify specific problems with mid-level organization, create a reader-based outline. A reader-based outline is a quick one or two-word summary of the first sentence of each paragraph. (If your topic sentences are working, these words will also describe the entire paragraph—read on for help with topic sentences later in the handout.) Does the outline show a progression of analysis? Or does the outline have a lot of case names or facts that do not tell the reader much about the analysis? If your reader-based outline doesn't address a lot of the themes you want your paper to discuss, think about working on mid-level organization.

Compare the following examples of a reader-based outline for two different texts discussing the passion element of voluntary manslaughter:

#### **Reader-based Outline A**

- √ Passion
- √ Time
- √ Rational behavior after

#### **Reader-based Outline B**

- √ Passion
- √ State v. Elder
- √ Defendant yelled

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Outline B does not tell the reader as much about the legal elements of passion. If your paragraphs are too long and your reader-based outline is unfocused, it may be time to rework your mid-level organization.

### **Step by Step: Improving Mid-Level Organization**

Improving mid-level organization may simply require arranging paragraphs in a different way or adding a few topic sentences, but more often, especially in early rewrites, it requires a complete overhaul of the section. Thus, you will need to be willing to break the section apart and then put it back together. Are you ready?



#### **1. Breaking.....it.....apart.**

The first step in organizing within a section is to break up the section by identifying legal elements or topics. It can be easier to do this with the paper's large-scale organization because often you have a statute with listed elements. However, just because you're analyzing one element of the statute does not mean that you only have one topic. This is your opportunity to get creative in finding topics when they aren't listed out for you, and to organize smaller sections around these topics. In the outlines on page 1, each writer examined passion as one element in the crime of voluntary manslaughter. However, writer A looked at the cases and determined that time and the defendant's behavior after the event were both key factors. Writer B does not seem to have identified any legal elements and has relied on cases and facts to supply the organization.

Often, the topics are already in your writing; you just have to find them. Read through a long section and underline key words. Think about the reasoning in the cases cited and what you are trying to accomplish by citing them. Then, you will start to notice trends in your writing that will give you ideas for organization.

Organizing by topic of law rather than by facts also helps avoid the "he said, she said" effect. In objective writing, the temptation is to structure topics by arguments and to alternate arguments from each side. Does this sound familiar: (In paragraph 1) "Plaintiff will argue..."; (in paragraph 2) "On the other hand, Defendant will argue..." This can create confusion for the reader about the memo's conclusions. A strong organization coupled with focused topic sentences (see below) will help avoid the "he said, she said" trap. Plan your organization around the law, and you're on your way to building a more coherent mid-level organization.

***Example:*** An excerpt from Writer A's discussion of the passion element of voluntary manslaughter illustrates how she organized discussion of the larger legal element (passion) around multiple legal sub-topics (time and cool reflection).

Although Hart knowingly killed Simpson, he was not in a "state of passion." TENN. CODE ANN. § 39-13-211 (LEXIS through 2000 Assemb.). Courts consider two factors when evaluating passion. First, it can exist only for a limited time after the provoking

behavior. State v. Elder, 982 S.W.2d 871 (Tenn. 1998). Second, it must “render the mind incapable of cool reflection.” Brown v. State, 836 S.W.2d 530, 543 (Tenn. 1992) (quoting Winston v. State, 268 S.W. 633 (Tenn. 1925)). Although the time before the killing and after Simpson’s offensive behavior was probably not long enough to negate the element of passion, Hart’s rational behavior during that time indicates that he was in a state of cool reflection and not in a state of passion.

The interval of time between Simpson’s offensive behavior and Hart’s action is an important factor in determining Hart’s state of mind; however, the time interval was not long enough to refute that Hart was in a state of passion. The court in Elder found that, “an interval of four and one-half hours before the appellant’s return to the scene” after the original confrontation disproved the passion element. Elder, 982 S.W.2d 871 at 879. Hart’s time interval, however, was minutes rather than hours. He had time only to pull into a rest stop and survey the damage. Because the killing was soon after the earlier confrontation, Hart’s limited time to cool does not disprove passion.

Although Hart may not have had enough time for his anger to cool, Hart’s rational behavior showed that he was capable of cool reflection immediately following Simpson’s insults and obstructive driving. “Passion’ has been defined as ‘[any] of the emotions of the mind [reflecting] anger, rage, sudden resentment, or terror, rendering the mind incapable of cool reflection.’” Brown, 836 S.W.2d at 543. By Mr. Hart’s own testimony, he was “boiling up,” which is evidence of anger, rage, or sudden resentment. However, he was still capable of cool reflection when he wrote down Simpson’s license plate number and pulled over to assess damage to his car. Therefore, even though the killing occurred shortly after the confrontation, because Hart acted with cool reflection, he was not acting in a state of passion.



## 2. Sketching your design: order and proportion.

You’ve identified all of your important legal points and broken them down into sub-points. Deciding how you present your arguments can be as important as your ideas themselves. Order and proportion are two critical parts of this presentation, and require creativity and strategic thinking.

### 1. Order topics to improve readability and persuasiveness.

Now that you have all of your legal topics, you need to order them in a way that makes sense to a variety of readers. You do not have to discuss topics in the order that courts discuss them. Even if the topic is part of a numbered statute, you don’t have to discuss the first part of the statute first and the last part last.

#### **Ordering Options: Common Techniques**

- Strong arguments up front
- Threshold issue first
- Most contentious issue first
- Broad to narrow issues
- Statutory interpretation then case law
- Simple to complex issues

In memo-writing, put your points in an order that improves accuracy, and in brief-writing, put your arguments in an order that improves persuasiveness. Even after you've written a draft, rethink your organization and play with questions of order. After you have completed the writing process you may have a better idea about what kind of order makes sense for your objective.

## 2. Proportion your discussion to focus your reader's attention.

Now that you've made important decisions about the order in which your section will discuss legal issues and sub-topics, you should consider the overall proportion of arguments in the section. If a discussion is well proportioned, a reader will quickly pick up on the points the writer most wants to emphasize by virtue of how much of the discussion is devoted to them. In contrast, poor proportion can bog your reader down in unimportant details and undermine the importance of central, but under-developed sections of analysis.

Your decisions about order and proportion will go hand in hand. You may decide to discuss a couple of threshold issues early in order to get them out of the way and focus your reader's attention on a more contentious element; you can communicate this strategy to the reader by devoting more discussion to the contentious issue. On the other hand, if you are writing a persuasive piece and want to emphasize your best argument by placing it first, you might devote most of the section to that argument.

Good proportion can strengthen your credibility as a writer. Often, weaknesses in your argument will not stand out until you evaluate the entire section and compare paragraphs to one another. If an important legal issue is not as developed as a smaller issue, the discussion of the important element will appear weak or incomplete. Decide which proportions are necessary to your theme and adjust accordingly.



## **3. Cohesion: gluing the pieces together.**

You've made important and strategic decisions about the complexity, order, and proportion of your arguments. But do they all add up to support the main ideas of each section? Merely placing items in order will not necessarily help the reader understand how arguments build on one another. The following strategies can help you develop cohesion between related topics and paragraphs that support your overall thesis.

### 1. Use headings that describe how sections fit into the overall document.

Headings can help the reader see how sections fit into the piece's overall argument. Be sure that the language of each heading ties into the overall organizational framework introduced earlier in the paper. Repeat key words and use parallel structure to show how the headings are

related and how they support the document’s main points. Headings offer another opportunity to make your legal conclusions explicit for the reader. In persuasive documents, rather than merely describe the section to be discussed, you can use persuasive headings that state the argument.

**Example**

1. Hart committed an intentional killing because his actions leading up to the incident provide evidence of premeditation.

2. Whether or not Hart committed an intentional killing, he committed a knowing killing because could reasonably foresee that striking the victim would cause death or serious injury.

*Note: These headings are effective in a persuasive document because each previews the legal conclusions to be discussed, and the reference in the second heading to the first communicates to the reader that either a knowing or intentional killing is sufficient.*

**2. Use topic sentences to express relationships among paragraphs.**

Use these same techniques in topic sentences to communicate relationships among paragraphs in smaller sections. Repetition of key phrases, use of parallel structure, and “signpost” language like “first,” “moreover,” and “finally” can help readers understand how paragraphs’ conclusions regarding several small sub-issues work together to support the “bigger picture.”

Strategic use of topic sentences can also help you address the dilemma of unwieldy paragraphs. On one hand, you may want to group together related ideas. On the other, these ideas may be too complex to be discussed together in one paragraph. (Note: A typical brief, memo, or opinion letter averages about three paragraph breaks per page. Paragraphs should seldom exceed two-thirds of a page.) Carefully constructed topic sentences can help the reader tie together related ideas without requiring their combination in one immense paragraph.

Finally, a good rule of thumb in evaluating cohesion between paragraphs is that a reader should be able to tell from the topic sentences how each paragraph fits into the overall discussion. A reader-based outline, such as the one demonstrated on page 1 of this handout, can help the reader evaluate cohesion among paragraphs.

**Example:** The following excerpt uses topic sentences to tie together paragraphs that express distinct but related legal ideas:

Second, to be liable for an intentional killing, Siller must have both intentionally sold the CD to Packer and intended for Packer to use as part of a suicide attempt. See McCollum v. CBS, 249 Cal. Rptr. 187 (Ct. App. 1988). There is little question that Siller intended to sell Pacer the “Already Dead” CD. He physically located the CD for Seller and personally worked the cash register for the sale.

However, Siller’s intentional sale of the CD is alone insufficient proof that Siller intended for its use as part of Pacer’s suicide attempt; he must have reasonably foreseen

that Pacer would put it to that use. See McCollum v. CBS, 249 Cal. Rptr. 187 (1988). In McCollum, the victim shot and killed himself while listening to recorded music dealing with the subject of suicide. The court found that while music producers and distributors intended the record's sale, they did not intend the victim's suicide because they did not know who the listeners would be, did not have any intent towards any particular listener, and did not know anything about the victim. See id.

While Siller had more specific knowledge about his CD buyer than the defendants in McCollum, he did not have enough knowledge to reasonably foresee the CD would be used as part of Pacer's suicide attempt. He knew of Pacer's interest in the suicide game Russian Roulette, that a song on the CD dealt with that game, and that Pacer himself owned a gun. He may even have observed that Pacer was emotionally fragile. However, he had no knowledge that Pacer was suicidal and, like the defendants in McCollum, had no other knowledge that his customer had purchased the CD for something other than its intended listening use. See id. at 187-88. Thus, though he knowingly made the CD sale to Siller, he did not have sufficient knowledge to intend its use as part of Parker's suicide.

### **Conclusion**

While reworking mid-level organization may at times seem frustrating or tedious, consider it an opportunity to be creative. The tips in this handout are like colors on an artist's palate. They are part of a portfolio of techniques that you can apply to paint a picture that your reader will appreciate, understand, and admire.

### **Sources**

- o JOHN C. DENRBACH, RICHARD V. SINGLETON, CATHLEEN S. WHARTON, AND JOAN M. RUHTENBERG, *A PRACTICAL GUIDE TO LEGAL WRITING & LEGAL METHOD* (2d ed. 1994).
- o MARY B. RAY & JILL J. RAMSFIELD, *THE LAWYER AS WRITER: GETTING IT RIGHT AND GETTING IT WRITTEN* (3d ed. 2000).
- o JILL J. RAMSFIELD, *THE LAW AS ARCHITECTURE: BUILDING LEGAL DOCUMENTS* (2000).