



CRAFTING MID-LEVEL ORGANIZATION: COHESION, COHERENCE, & THE READER-BASED OUTLINE

© 2020 The Writing Center at the Georgetown University Law Center.¹ All rights reserved.

You have just completed a draft of your memo or brief. 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. Does your paper need any further review?

As you become a more critical reader and editor of your own work, you may also want to give some thought to your *mid-level organization*: the order and proportion of paragraphs and the connections among them. Ensuring strong mid-level organization in a memo or brief means that you are ensuring your writing is both cohesive and coherent. Mid-level *cohesion* can be achieved when your paragraphs are arranged in a way that allows them to easily flow from one to the next. Mid-level *coherence* can be achieved when all the paragraphs in a piece of writing (or even in just one section of the writing) add up to the big-picture idea. In the context of a memo or brief, the big-picture idea of a section may be your analysis or argument on one element of a statute, for example.

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?

Ask yourself the following questions to determine if your mid-level organization needs work:

- Are your paragraphs starting to look more like full pages?
- Do your arguments repeat themselves?
- Do paragraphs just start without any connection to previous themes?
- If you were reading your arguments for the first time, would you get lost?

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 one- or two-word summary of the first sentence of each paragraph. (If

¹ Original handout prepared by Maureen Aidasani and Sarah Barr Kahl. Revised by Sabrina Bernadel (2020).

your topic sentences are working, these words will also describe the entire paragraph—read on for help with topic sentences later in the handout.) Once you have created the reader-based outline, does the outline show a progression of the 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. For context, proving the passion element of voluntary manslaughter requires addressing two sub-elements: (1) amount of time passed between the passion-inducing incident and the killing and (2) the defendant's capability for cool reflection before the killing.

<u>Reader-Based Outline A</u>
✓ ¶1 - Passion
✓ ¶2 - Time
✓ ¶3 - Cool reflection

<u>Reader-Based Outline B</u>
✗ ¶1 - Passion
✗ ¶2 - <i>State v. Elder</i>
✗ ¶3 - Defendant Yelled

Outline A shows the logical progression of the paper's analysis. The first paragraph in Outline A might discuss how passion is an element of voluntary manslaughter and that passion is proved through two sub-elements: time and ability to engage in cool reflection before the crime. The two remaining paragraphs in Outline A then develop those two sub-elements of passion. Outline B does not tell the reader as much about passion and its sub-elements. If your reader-based outline looks more like Outline B, it may be time to rearrange your paragraph structures.

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. In many cases, especially in early rewrites, it may require a complete overhaul of the section. Thus, you will need to be willing to break the section apart and then put it back together, following these steps.

1. Breaking Up Sections by Topics and Sub-Topics

If writing a legal memo or brief, the first step in organizing within a section is to break up the section by identifying legal elements, factors, or topics. You may have already started this with your large-scale organization because often you will have divided your paper into broad sections based on listed elements from a statute or the parts of a test designated from case law.

Let's say you are working with a statute with clear elements. Just because you're analyzing one element of the statute may not necessarily mean that you only have one issue to address in that section. This could be your opportunity to get creative in finding sub-elements when they haven't been listed out for you in the statute and to organize smaller sections around these sub-elements.

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 case law and determined that time and the defendant's cool reflection were both key sub-elements to analyzing passion. Writer A subsequently organized paragraphs two and three around those sub-elements. Writer B does not seem to have identified any legal elements of passion and has relied on cases and facts to provide the organization of the section.

Often, the key legal elements, factors, or 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 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).

Paragraph 1 – Main Topic: What is passion and its elements

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.

Paragraph 2 – Sub-Topic 1: "Time" as an element 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 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.

Paragraph 3 – Sub-Topic 2: "Cool Reflection" as an element of 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 elements or factors and broken them down into sub-elements or sub-factors. 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 elements or factors to improve readability and persuasiveness.

Now that you have all of your legal elements or factors identified, you need to order them in a way that makes sense to a variety of readers. You do not have to discuss issues in the order that courts discuss them. Even if there is 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

- Threshold issue first (if there is one)
- Strong arguments up front
- Most contentious issue first
- Broad to narrow issues
- Statutory interpretation then case law (or vice versa)
- Simple to complex issues

One caveat: If the law you are working with contains a threshold issue, make sure to analyze that threshold issue before other issues in your writing. For example, a threshold issue may be one that, if a certain conclusion is reached, might automatically prove an element of a statute and remove the need to analyze any sub-elements. In other cases, a threshold issue is sometimes called a dispositive issue, one that has the potential to “dispose of” the case and, if so, makes the remaining issues moot. Make sure to check the statute, regulation, or case law you are using for potential threshold issues that may require you to address them before other issues in a memo or brief.

In memo-writing, put your points in an order that improves the reader’s ability to understand your conclusion. 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 the order, perhaps using some of the common techniques listed above. Rethinking the order after you have completed the drafting process can be effective because 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 elements or factors and their sub-elements or sub-factors, you should consider the overall proportion of analysis or 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 significance of central sections of analysis that may have been left underdeveloped.

Your decisions about order and proportion will go hand in hand. You may decide to discuss a couple of undisputed threshold issues briefly in order to get them out of the way and focus your reader’s attention on a more contentious issue. You can communicate this strategy to the reader by devoting more discussion to the contentious issue than the threshold one. 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. If an important legal issue is not as developed as a minor issue, the discussion of the important element will appear weak or incomplete. Often, weaknesses in your argument will not stand out until you evaluate the entire section and compare paragraphs to one another. Once you have spotted those weaknesses, decide which proportions are necessary to your theme and adjust accordingly.

Example: Based on the example excerpt on page 3, the writer might decide to flip the order of her “time” and “cool reflection” paragraphs because her “cool reflection” paragraph is the more significant argument that supports her ultimate thesis that Hart did not knowingly kill Simpson in a state of passion. Relatedly, if the excerpt is a persuasive document, the writer may also want to keep her “time” argument brief because it may undercut her emphasis on “cool reflection” and dissuade the reader from coming to the writer’s intended overall conclusion.

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—the big picture—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 to 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. Depending on the proportions you have chosen for your analyses or arguments, you may also want to use sub-headings to announce sub-elements or sub-factors that will be relevant to the section.

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

I. Hart did not knowingly kill Simpson in a “state of passion.”

A. Hart did not kill Simpson in a “state of passion” because his rational behavior after hearing Simpson’s insults suggested Hart was capable of “cool reflection.”

Example 2

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

II. 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. In example 2, 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-topics 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 Pacer and intended for Pacer to use the CD as part of a suicide attempt. *See McCollum v. CBS, Inc.*, 249 Cal. Rptr. 187 (Cal. Ct. App. 1988). There is little question that Siller intended to sell Pacer the “Already Dead” CD. He physically located the CD for Siller 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 because he must have reasonably foreseen that Pacer would put it to that use. *See McCollum*, 249 Cal. Rptr. at 1004. 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. *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

Although 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 palette. 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

- JOHN C. DENRBACH, RICHARD V. SINGLETON, CATHLEEN S. WHARTON, & JOAN M. RUHTENBERG, *A PRACTICAL GUIDE TO LEGAL WRITING & LEGAL METHOD* (2d ed. 1994).
- MARY B. RAY & JILL J. RAMSFIELD, *THE LAWYER AS WRITER: GETTING IT RIGHT AND GETTING IT WRITTEN* (3d ed. 2000).
- JILL J. RAMSFIELD, *THE LAW AS ARCHITECTURE: BUILDING LEGAL DOCUMENTS* (2000).
- KRISTEN KONRAD TISCIONE, *RHETORIC FOR LEGAL WRITERS: THE THEORY AND PRACTICE OF ANALYSIS AND PERSUASION* 208 (2d ed. 2016).
- JOSEPH M. WILLIAMS & JOSEPH BIZUP, *STYLE: LESSONS IN CLARITY AND GRACE* 66-69 (12th ed. 2017).