The Argument Section in the Appellate Brief

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In a Nutshell . . .

Today You Will Learn

I. Large-Scale Organization of the Argument Section,

II. Small-Scale Organization of the Argument Section, and

III. Tips for Making Your Argument Section More Persuasive.
I. Large-Scale Organization of the Argument Section
Large-Scale Organization: Order of Issues

- **What argument/issue goes first?**

*Options:*

- Strongest/most persuasive
- Greatest relief
- Most logical
- Most strategically beneficial
Large-Scale Organization: Special Considerations for Appellee

• **In real life**: TRAP 38.2(a)(2)

  “When practicable, the appellee’s brief should respond to the appellant’s issues or points in the order the appellant presented those issues or points.”

• **In moot court and your LSS brief**
Large-Scale Organization: Thesis ¶ ¶

Content:

- **What court should do/hold + why** (nutshell)
- Theme
- Any common authority
  - SOR
  - Procedure
  - substantive
- **Roadmap**
  - Dismisses any non-issues
  - Is phrased persuasively (e.g., as summary of position on each ground)
Large-Scale Organization: Thesis ¶ ¶

- **Format:**
  - 1-2 ¶¶

- **Placement:**
  - **Initial Thesis ¶**
    - Place between “Argument” heading & 1st PH.
    - Use even if only 1 PH!
  - **Subsequent Thesis ¶¶ ("Mini-Thesis ¶¶")**
    - Use only if a PH has SHs (“fork in road”).
    - Don’t need to repeat theme (but can).
Example: Initial Thesis ¶ + PHs with No SHs

ARGUMENT

Initial Thesis Paragraph(s)

I. PH for First Ground for Relief

II. PH for Second Ground for Relief

III. PH for Third Ground for Relief
Example: Initial Thesis ¶ + PHs with SHs

ARGUMENT

Initial Thesis Paragraph(s)

I. PH for First Ground for Relief
   “Mini” Thesis Paragraph
   A. First SH
   B. Second SH

II. PH for Second Ground for Relief
   “Mini” Thesis Paragraph
   A. First SH
   B. Second SH
II. Small-Scale Organization of the Argument Section
Small-Scale Organization: Basics

- Use CR[e]AC, but make it persuasive.
- 1 heading (PH or SH) = 1 CR[e]AC.
Small-Scale Organization: CR[e]AC

- **C:**
  - PH or SH may serve as “C” (but depends).
  - State as desired relief/disposition + support.

- **R[e]:** State favorably.

- **A:**
  - Follow Pro→Con→Pro.
  - Use “Persuasive Trix of the Trade.”
  - Defuse counter-arguments effectively.

- **C:** Multiple possible “levels”
  - Desired holding on merits, procedure, SOR
  - Desired disposition of lower-court judgment (e.g., affirm, reverse)
III. Tips for Making Your Argument Section More Persuasive
Tip 1: “The law isn’t neutral.”

- Consider breadth of phrasing.
- Think about positive or negative phrasing.
- Suggest a conclusion on the rule.
- Choose language carefully.
- Include favorable aspects of rule.
- Deemphasize unfavorable aspects of rule.
- Deal effectively with unfavorable authority.
Tip 2: “Deal with counter-arguments effectively.” (Edwards, pp. 197-98; Coughlin, pp. 323-25)

- Doing preemptive rebuttal (appellant)
- Using persuasive “Trix of the Trade”
- Defusing opponent’s strong or vivid language/images
- Devoting less space
- Giving less detail
- Phrasing: “Why you win; why opponent loses”
- Introducing counter-arguments
Tip 3: “Connect the dots.”

- Incorporate legal test’s language in “A.”
- Use thesis sentences to start ¶s.
- Analogical reasoning:
  - Lead in with a thesis sentence.
  - Compare facts to facts.
  - Say what the comparison’s result is.
- Show how sequential sentences/¶s relate, e.g.,
  - Use transitions.
  - Use a “looping” technique.
  - Use repetition.
Tip 4: “Bolster Your Analysis with Policy.”

- **For whom?** Remember your reader.
- **When?** Consider when it’s most effective.
- **How?** Follow the steps for making effective policy arguments.
  - *See* TWEN, Class Materials, Class 7: “Class 7—RESOURCE--making policy arguments (Newmann and Simon) S2016.pdf.”
- **Where?** Consider the best placement.
And finally . . .

. . . Comments on the appellee’s brief in Law School Land.