

The Argument Section in the Appellate Brief

Professor Lauren Simpson

Class 7

Spring 2016



* This presentation is adapted from your Coughlin textbook and from Richard K. Neumann, Jr. & Sheila Simon, *Legal Writing* (2d ed. 2011), and Linda H. Edwards, *Legal Writing & Analysis* (3d ed. 2011).

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.

