

# BRIEF AND TO THE POINT

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## Strategies For Submitting A First-Rate Appellate Brief

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# Preliminary Considerations

## 1. Organizational Structure

- As respondent, defer to appellant's organizational structure? Or, lead from strength?
  - Procedural defaults, then merits
- Why you win (+), then why your opponent loses (-)

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# Preliminary Considerations

## 2. Setting

- Magistrate division?
- District court?
- Intermediate appellate court?
- Court of last resort?

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## Style Tip 1 – Brevity

- Replace long words with short words
- Replace long transitional words with shorter ones
- Replace phrases with a single word

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## Style Tip 2 – Precision & Persuasion

- Replace vague verbs with precise verbs
  - Indicates or Suggests → shows, reveals, supports, demonstrates
  - There are / It is
- Avoid passive voice
  - Subject acts, not acted upon
- Use adverbs sparingly

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## Style Tip 2 – Precision & Persuasion

- Use parallel sequences of punchy verbs or nouns
- Example:
  - “Documentaries and photographs depicting much more gruesome dogfights ... have **fueled** the animal rights movement, **supported** legislation, and **urged** vigorous public debate.”

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## Style Tip 3 - Statement of Facts

- Only point the Court to the most important/relevant facts
- Do NOT include extraneous facts
  - avoid including specific dates
- Do not sweep bad facts under the rug hoping the Court will overlook them

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## Style Tip 4 - Footnotes & Block Quotes

- Footnotes can be useful under some circumstances
- Avoid Block Quotes

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## Style Tip 5 – Miscellaneous

- “cleaned up” parenthetical
  - $\frac{3}{4}$  of the federal district courts have adopted it
  - All federal courts of appeals have adopted the parenthetical
  - Justice Thomas adopted this parenthetical in Brownback v. King, 141 S. Ct. 740, 748 (2021).
  - NOT yet adopted by The Bluebook

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# EXAMPLE

- In *State v. Field*, 144 Idaho 599 (2007):
- “Our focus is upon the continuing impact on the trial of the incident that triggered the mistrial motion. *State v. Sandoval–Tena*, 138 Idaho 908, 912, 71 P.3d 1055, 1059 (2003) (quoting *State v. Shepherd*, 124 Idaho 54, 57, 855 P.2d 891, 894 (Ct.App.1993) (quoting *State v. Urquhart*, 105 Idaho 92, 95, 665 P.2d 1102, 1105 (Ct.App.1983))).”

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- *State v. Field*, 144 Idaho 599, 571, 165 P.3d 273, 285 (2007) (quoting *State v. Sandoval–Tena*, 138 Idaho 908, 912, 71 P.3d 1055, 1059 (2003) (quoting *State v. Shepherd*, 124 Idaho 54, 57, 855 P.2d 891, 894 (Ct.App.1993) (quoting *State v. Urquhart*, 105 Idaho 92, 95, 665 P.2d 1102, 1105 (Ct.App.1983)))).
- *State v. Field*, 144 Idaho 599, 571, 165 P.3d 273, 285 (2007) (internal quotation marks omitted).
- *State v. Field*, 144 Idaho 599, 571, 165 P.3d 273, 285 (2007) (cleaned up).

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"This question of standing presents a two-part inquiry: 'The first [question] is whether the individual, by his conduct, has "exhibited an actual (subjective) expectation of privacy,"— whether ... the individual has shown that "he seeks to preserve [something] as private." The second question is whether the individual's subjective expectation of privacy is "one that society is prepared to recognize as 'reasonable,'"—whether ... the individual's expectation, viewed objectively, is "justifiable" under the circumstances.'" *State v. Rebo*, 168 Idaho 234, 239, 482 P.3d 569, 574 (2020) (quoting *Smith v. Maryland*, 442 U.S. 735, 740, 99 S.Ct. 2577, 61 L.Ed.2d 220 (1979) (citing *Katz*, 389 U.S. at 351-61, 88 S.Ct. 507 (internal citations omitted))).

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"This question of standing presents a two-part inquiry: The first question is whether the individual, by his conduct, has exhibited an actual subjective expectation of privacy, — whether the individual has shown that he seeks to preserve something as private." *State v. Rebo*, 168 Idaho 234, 239, 482 P.3d 569, 574 (2020) (cleaned up).

"The second question is whether the individual's subjective expectation of privacy is one that society is prepared to recognize as reasonable, — whether the individual's expectation, viewed objectively, is justifiable under the circumstances." *Id.*

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## Style Tip 6 – Potential Pitfalls

- Scattershot approach
- Misleading citations to the record
- Repetition
- Distinguishing case law without explaining why the distinction matters

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## Write Like Justice Kagan

*Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1022 (2021).

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In each of these two cases, a state court held that it had jurisdiction **with respect to** Ford Motor Company (**hereinafter, “Ford”**) in a products-liability suit **that was the result** of a car accident. The accident **transpired** in the State where suit was brought. The victim was one of the State’s residents. And Ford did substantial business in the State – **inter alia**, advertising, selling, and servicing the model of vehicle the suit claims is defective. **Nevertheless**, Ford contends that jurisdiction is improper **due to the fact** that the particular car **that was involved** in the crash was not **initially** sold in the forum State; **moreover, it was not** designed or manufactured there. We reject that argument. **Where** a company **similar to** Ford serves a market for a product in a State and that product causes injury in the State to one of its residents, the State’s courts can entertain **the suit that results therefrom**.

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In each of these two cases, a state court held that it had jurisdiction ~~with respect to~~ Ford Motor Company (~~hereinafter, “Ford”~~) in a products-liability suit ~~that was the result~~ of a car accident.

The accident ~~transpired~~ in the State where suit was brought.

The victim was one of the State’s residents. And Ford did substantial business in the State – ~~inter alia~~, advertising, selling, and servicing the model of vehicle the suit claims is defective.

In each of these two cases, a state court held that it had jurisdiction **over** Ford Motor Company in a products-liability suit **stemming from** of a car accident.

The accident **happened** in the State where suit was brought.

The victim was one of the State’s residents. And Ford did substantial business in the State – **among other things**, advertising, selling, and servicing the model of vehicle the suit claims is defective.

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~~Nevertheless~~, Ford contends that jurisdiction is improper ~~due to the fact~~ that the particular car ~~that was involved~~ in the crash was not ~~initially~~ sold in the forum State; ~~moreover, it was not~~ designed or manufactured there.

**But**, Ford contends that jurisdiction is improper **because** the particular car **involved** in the crash was not **first** sold in the forum State **nor was it** designed or manufactured there.

~~Where~~ a company ~~similar to~~ Ford serves a market for a product in a State and that product causes injury in the State to one of its residents, the State's courts can entertain the ~~suit that results therefrom~~.

**When** a company **like** Ford serves a market for a product in a State and that product causes injury in the State to one of its residents, the State's courts can entertain the **resulting suit**.

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## Anatomy of an Effective Oral Argument

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# Preparing For Arguments

- Reread briefs, record, transcript, and cited cases
- Prepare notes or an outline
- Moot every case

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# Objectives of Oral Argument

- Get to the point A.S.A.P.
- Begin with a roadmap
- Be clear about the relief you are seeking
- Respond to questions, but return to your main points
- The best arguments are conversations with the judges/justices

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# Tips

- Be yourself
- Know your audience
- Be deliberate in your pacing
- Speak directly
- Don't feel bound by your brief
- Do no harm
- Don't jingle or twitch
  - Remove keys, phone, coins, pens, etc.

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# Good Luck!

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