

BRIEF AND TO THE POINT

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Strategies For Submitting A First-Rate Appellate Brief

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Preliminary Considerations

1. Constraints on government lawyers

- Consider the impact your position in this case could have on your entity's interests in other pending cases
- Consider the ways your position might affect your entity's interests in future cases
- One lawyer represents the rest

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Preliminary Considerations

2. Organizational Structure

- As respondent, defer to appellant's organizational structure? Or, lead from strength?
- Why you win (+), then why your opponent loses (-)
 - Do not rephrase a *pro se* litigant's argument to make it stronger than it really is
- Procedural defaults, then merits

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Preliminary Considerations

3. 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
 - ¾ 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).

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EXAMPLE

- *State v. Field*, 144 Idaho 599, 571, 165 P.3d 273, 285 (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) (*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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Style Tip 6 – Potential Pitfalls

- Scattershot approach
- Misleading citations to the record
- Repetitious
- 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.

~~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~~.

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.

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!

Feel free to contact me:

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