



PERSUASIVE ISSUE STATEMENTS¹

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An effective issue statement² is both informative and persuasive. Because it often appears at the outset of a brief, it frames the reader’s understanding of the dispute and signals the result the writer seeks to achieve. Crafting such a statement requires more than identifying a legal question; it requires careful attention to structure, framing, and tone. This guide first explains the basic components and traditional components of persuasive issue statements. It then explores how writers can enhance clarity and persuasion through strategic presentation of law and facts. Next, it addresses how the issue statement can reflect the applicable standard of review and the nature of the question presented. Finally, it introduces an alternative approach—the “deep issue” statement—which advanced writers may consider when greater context and rhetorical force are needed.

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² Issue statements may also be called “Question Presented,” or “Statement of the Issue Presented for Review.” You should ensure that you are using the appropriate terms for the court where your brief is filed. RICHARD K. NEUMANN, JR. & KRISTEN KONRAD TISCIONE, *LEGAL REASONING AND LEGAL WRITING* 327 (8th ed. 2017). This handout addresses persuasive issue statements.

I. THE BASICS OF THE PERSUASIVE ISSUE STATEMENT

A brief is designed to persuade a judge to rule in your client's favor. The issue statement, often the first substantive section of a brief, sets the stage for a persuasive argument. It introduces the dispute, frames the issue from your client's perspective, and signals the outcome you seek. A well-crafted issue statement can shape how the reader understands everything that follows.

A. PURPOSE

An effective issue statement is both informative and persuasive.³ It serves three critical functions:

- **Identifies** the legal issue the court must resolve,
- **Frames** that issue in a way that supports your client's position, and
- **Suggests** the result you seek.⁴

Because the issue statement is often the reader's first impression of your argument, both what you say and how you say it will influence how the judge perceives your case.

B. TRADITIONAL FORMATS

Several common formats help ensure that the issue statement includes the essential components: the controlling law, the legal question, and the legally significant facts (discussed in Section I.C below). Although no single format is required, two approaches are widely used and effective: (1) the "Under-Does-When" format and (2) the "Whether" format.⁵

1. Under-Does-When

The "Under-Does-When" format presents the issue as a question by stating the governing law, introducing the legally significant facts, and then asking whether the law is satisfied in light of those facts:

Under [controlling law], does [legal question] when [legally significant facts]?

This format is especially useful for mixed questions of law and fact; that is situations where the court must take a legal rule and apply it to a specific set of facts to determine whether the standard is satisfied. When using this format, adjust the verb tense to reflect the timing of the issue. For example, use "did" for past events and "would" for hypothetical or future events.

³ LINDA H. EDWARDS, *LEGAL WRITING: PROCESS, ANALYSIS, AND ORGANIZATION* 277 (8th ed. 2022). In some contexts, such as objective memoranda, issue statements are expected to be neutral rather than persuasive. This handout focuses on persuasive issue statements as used in briefs and other advocacy-oriented writing.

⁴ NEUMANN & TISCIONE, *supra* note 2, at 327.

⁵ This document will address a nontraditional, multi-sentence format in Part IV.

2. **Whether**

The “Whether” format presents the issue in a more declarative form. This structure first presents the reader with the legal question and follows with the controlling law and legally significant facts:

Whether [legal question] **under** [controlling law] **when** [legally significant facts].

This format is often used in appellate writing and may feel more formal. It can be particularly effective for more abstract legal questions, where the court is deciding what the law means, because it presents the issue at a higher level of generality. Although it functions as a question, it is typically written as a sentence ending with a period.⁶

C. WHAT SHOULD AN ISSUE STATEMENT INCLUDE?

An effective issue statement includes three core components: **(1) the controlling law, (2) the legal question, and (3) the legally significant facts.**

1. Controlling Law

An issue statement must refer to the controlling, or governing, law. This reference can be done implicitly or explicitly, with your desired level of specificity based upon the complexity of the case and issues involved. When multiple legal issues are involved, it is often helpful to explicitly identify the source of the law. For example, in a case involving a Fourth Amendment search claim and a Fifth Amendment self-incrimination claim, identifying the specific constitutional provision clarifies which legal standard applies. When the legal framework is obvious, like when the cause of action clearly signals the governing doctrine, you may instead refer more generally to the right or issue. For example, in a case that turns solely on free speech, a reference to “the right to freedom of speech” may be sufficient, eliminating the need to also reference the First Amendment.

2. Legal Question

The legal question poses the precise issue the court must decide. Assuming that your client’s right to free speech under the First Amendment is at issue, the legal question should make clear what the court must resolve. For example, you might ask: “Under the First Amendment, did the state violate John Doe’s free speech rights when it prohibited him from engaging in a political protest?”

By contrast, an issue statement that embeds the conclusion is improper and ineffective. For example, “Whether the state violated John Doe’s clearly established First Amendment right to free speech when it prohibited him from engaging in a political protest” does not present a real

⁶ EDWARDS, *supra* note 3, at 141.

question. The court must decide whether John Doe has a First Amendment right to free speech in such circumstances, not assume that he did.⁷

Additionally, be careful not to avoid the actual question the court must decide.⁸ For example, “Whether an identification should be suppressed when the identification procedures were unduly suggestive and unreliable.” This issue statement avoids the operative legal question of whether the identification procedures were unduly suggestive and unreliable. No party would debate that an unduly suggestive and unreliable identification should be suppressed; rather, the question for the court is whether the identification procedures were unduly suggestive and unreliable.

3. Legally Significant Facts

Legally significant facts are facts that affect the outcome of the case and are not simply background details or narrative context.⁹ Legally significant facts are also distinct from legal conclusions: the facts should describe what happened, not assert that the law was violated. The facts you include here should be only those facts critical to the ultimate determination you would like the court to reach. Oftentimes, these facts become clearer as you develop your argument, so it may be helpful to identify them after drafting your analysis.

When selecting facts for your issue statement:

- Include the facts that matter to resolving the issue, selecting those that help the reader quickly understand the dispute and support your framing of it.
- Present the facts accurately, so the court can trust your framing of the case.
- Avoid exaggeration or omission, as doing so can undermine your credibility and weaken the persuasive force of your argument.

Consider the difference:

[1] “Whether the search was supported by probable cause.”

[2] “Whether Officer Jones had probable cause under the Fourth Amendment of the U.S. Constitution to search Mr. Wright when Officer Jones saw Mr. Wright, a known criminal, running away from a grocery store moments after a robbery was reported.”

The second issue statement is more effective. The first issue statement provides almost no context. The second issue statement clearly indicates the legal question, identifies the controlling law, and provides facts that shape how the reader evaluates the issue. Including legally significant facts not only informs the reader, but also subtly guides the reader towards your preferred outcome.

⁷ When drafting an issue statement, be careful not to avoid the actual question the court must decide by assuming away the answer. EDWARDS, *supra* note 3, at 280.

⁸ *Id.*

⁹ See NEUMANN & TISCIONE, *supra* note 2, at 330.

D. HOW LONG SHOULD AN ISSUE STATEMENT BE?

An issue statement should be concise and easy to read. The reader should be able to digest it quickly on the first read.¹⁰ Typically, an issue statement will be a single sentence, but it is better to have multiple easy to read sentences than one incomprehensible sentence.¹¹ A good rule of thumb is to ensure that it is no longer than three or four lines. A useful guideline is the “breath test.” If the sentence can be read comfortably in one breath, the length is probably appropriate.

Nevertheless, brevity should not come at the expense of clarity and persuasion. In complex cases, a longer issue statement may be necessary to include necessary critical facts. When that occurs, focus on clarity and structure so that the statement remains easy to follow.

II. MAKING THE ISSUE STATEMENT PERSUASIVE

The issue statement should be persuasive, presenting the issue in a light favorable to your position, but it should not be overly dramatic or argumentative.¹² The aim is instead to **suggest a favorable answer while accurately stating the issue** to be decided.¹³ This aim is achieved through clarity of structure as well as careful choices about how to frame the law, present the facts, and phrase the statement as a whole.

A. CLARITY

Clarity is essential to persuasion because the reader must be able to quickly understand the law, the facts, and how they fit together in order to evaluate your argument. A concise issue statement that clearly presents the governing law, the legal questions, and the relevant facts will be easier for the reader to understand, which will help them identify with your position. Both the “Under-Does-When” and “Whether” formats provide useful structure.

In practice, the most difficult part is often presenting the legally significant facts clearly. It can be especially difficult to present the facts clearly when determinative facts are not interrelated, have occurred in different locations, or have occurred at different times. In these situations, there is no single correct approach, but you must take care to organize the facts in a way that is easy to follow. You should also identify the parties clearly and consistently so the reader can readily understand who did what. Well-organized facts provide the context that affects the reader’s perception of your argument.

Consider the following issue statements, which convey the same information but present the facts differently. Which is more persuasive?

¹⁰ *Id.* at 331.

¹¹ EDWARDS, *supra* note 3, at 1412. If multiple sentences are needed, one should consider using the deep or multi-sentence issue statement format, discussed *infra* Part IV.

¹² EDWARDS, *supra* note 3, at 280.

¹³ *Id.* at 281.

[1] Under the search-incident-to-arrest exception to the probable cause requirement of the Fourth Amendment, did the District Court properly suppress marijuana seized when Officer Jones entered Defendant's home, arrested and handcuffed him, and then opened a laundry hamper about ten feet away?

[2] Under the search-incident-to-arrest exception to the probable cause requirement of the Fourth Amendment, did the District Court properly suppress marijuana Officer Jones seized from a laundry hamper situated about ten feet from Defendant during a search that occurred about ten minutes after Defendant was arrested and handcuffed?

The second example is easier to follow because it presents the facts in a clearer and more logical order. Organizing the facts so that the timing and spatial relationships are easy to understand helps the reader quickly grasp the situation and evaluate the issue, which enhances the likelihood that the reader will be persuaded.

B. FRAMING THE LAW

The way you present the governing law can influence how the reader understands the issue. In many cases, the relevant precedent does not equally favor both sides. As a result, you may choose to emphasize the law differently depending on how it supports your position.

Although you should never omit or misrepresent the law, the level of detail and the language you use can subtly signal your position to the reader. For example, when the law is less favorable to your side, you may describe the law more generally and focus more on the facts. When the law is favorable to your side, you may emphasize its source, authority, or precise wording to signal that the rule is well-established and should control the outcome.

Consider how the following issue statements, submitted by opposing parties in *Texas v. Johnson*, 491 U.S. 397 (1989), frame the law differently to favor each parties' positions:

[1] Petitioner's Issue Statement:

"Does the public burning of an American Flag during the course of a political demonstration constitute free speech subject to the protection of the First Amendment?"¹⁴

[2] Respondent's Issue Statement:

"Whether Tex. Penal Code Ann. § 42.09(a)(3), which penalizes such "physical mistreat[ment]" of "a national flag" as the actor "knows will seriously offend one or more persons likely to observe or discover his action," facially violates the First and Fourteenth Amendments to the United States Constitution."¹⁵

¹⁴ Brief for Petitioner at i., *Texas v. Johnson*, 491 U.S. 397 (1989) (No. 88-155).

¹⁵ Brief for Respondent at i., *Johnson*, 491 U.S. 397 (No. 88-155).

The petitioner frames the issue broadly in terms of free speech, while the respondent focuses on the specific statutory language. Each emphasizes the aspects of the law that best support its position.

C. PRESENTING THE FACTS

Although it may be tempting to include only the facts that favor your client, **omitting key legally significant facts can undermine your credibility** and thereby weaken persuasive effect.¹⁶ Instead, you must present legally significant facts accurately, using emphasis and organization to guide the reader's perception.

You can guide the reader's perception through both **language and placement**. For example, if you are presenting three legally significant facts, two of which were favorable to your client and one of which was not, you would not typically lead with the unfavorable fact. Instead, you might choose to place the unfavorable fact between the two favorable facts (burying it within a list, where the reader is more likely to remember the first and last facts) or present it last (signaling that it should be of least importance in the ultimate determination), minimizing its impact. At the same time, you should not exaggerate favorable facts, as doing so can damage your credibility.

In addition, the facts must not include legal conclusions. For example, if the issue is whether a search was unlawful under the Fourth Amendment, you should describe the police officer's actions (e.g., "the officer looked through the defendant's window") rather than stating that the officer searched the defendant's home (which is a legal conclusion).

Ultimately, how you present the facts, through your choices of structure, language, and level of detail, shapes the reader's perception of the case. Your choice to accurately present all determinative facts should strengthen your credibility and make your argument more persuasive.

D. PHRASING THE ISSUE STATEMENT TO ELICIT AN AFFIRMATIVE ANSWER

An effective issue statement must suggest the answer you would like the court to reach. In most cases, this means framing the issue so that the most natural response from the reader is "yes." Although it is possible to construct an effective issue statement that elicits a "no" answer from the reader, given that readers are inclined to believe you want a positive response, issue statements designed with the goal of a "no" response risk confusion¹⁷ and weakened persuasive effect.¹⁸

The goal applies regardless of the format of the issue statement. Even "Whether" issue statements, though declaratory in form, can invite a "yes" or "no" response. For example, "Whether the officer had probable cause to search the vehicle after observing marijuana residue

¹⁶ See NEUMANN & TISCIONE, *supra* note 2, at 334.

¹⁷ *Id.* at 332.

¹⁸ See EDWARDS, *supra* note 3, at 281.

in plain view on the dashboard” subtly invites a “yes” answer by emphasizing facts that support probable cause.

III. THE RELATIONSHIP BETWEEN THE ISSUE STATEMENT, THE STANDARD OF REVIEW, AND THE NATURE OF THE QUESTION BEFORE THE COURT

When crafting an issue statement for an appellate brief, it helps to be mindful of the applicable standard of review.¹⁹

For example, if the court will review your appeal under a deferential standard, such as the “abuse of discretion” or “clear error” standards, you should not frame the issue as if the appellate court will be deciding the question anew. Instead, your issue statement may focus on the lower court’s decision and whether it was reasonable. This approach may involve emphasizing the evidence that was before the lower court (or jury), the factors the trial judge considered (or failed to consider), or the legal standard that the trial judge applied.

For instance, in appealing a trial judge’s decision to exclude evidence under Fed. R. Evid. 403 (reviewed for abuse of discretion) you would not ask “whether the evidence was more prejudicial than probative,” because that framing treats the question as if the appellate court is deciding it for the first time under de novo review. Instead, you would focus on the trial court’s decision: “whether the trial court abused its discretion in determining that the evidence was more prejudicial than probative when [insert facts of the case].”

In addition to the standard of review, you should consider the type of question you are presenting. Issue statements may involve (i) pure questions of law, (ii) questions of fact, or (iii) mixed questions of law and fact.²⁰ Although there are no rigid rules, certain formats tend to work better for certain types of questions. For example, the under-does-when format is tailor-made for mixed questions of law and fact, where the court must apply a legal standard to a set of historical facts. “Under” introduces the governing law, “does” asks whether the law is satisfied in light of those facts, and “when” presents the relevant facts. By contrast, this format be less effective when the question concerns only facts or only law. When the issue is purely factual, there may be no governing legal rule to introduce. Thus, the “whether” format may work best:

“Whether the trial court properly found that defendant discharged his gun where seven other individuals with firearms were present and the origin of the shell casing at issue could not be definitively determined.”

This formulation is effective because the issue is purely factual and does not involve applying a legal rule, making the “Under–Does–When” format, which is designed for applying law to facts, less suitable. If you were to rephrase the above issue statement using the under-

¹⁹ For more information on standards of review, see *Identifying and Understanding Standards of Review*, GULC Writing Center (2013), available at <http://www.law.georgetown.edu/academics/academic-programs/legal-writing/scholarship/writing-center/upload/standardsofreview.pdf>.

²⁰ See EDWARDS, *supra* note 3, at 278.

does-when format, where would the “under” go? Similarly, the “whether” format may work best for a pure legal question:

“Whether a conspiracy to commit extortion requires that the conspirators agree to obtain property from someone outside the conspiracy.”²¹

This formulation is effective because it presents a purely legal question without relying on specific facts. If you were to rephrase this issue statement using the under-does-when format, where would the “when” go? Another way to phrase this question might be to use a modified version of the underdoes-when format: under-does-only when.

Under the Hobbs Act, does a conspiracy to commit extortion exist only when the conspirators agree to obtain property from someone outside the conspiracy?

The key point is that the most effective issue statements reflect both the standard of review and the nature of the question presented. There is no single best format for a given kind of legal question. Effective advocates consider these factors and choose the formulation that is the clearest and most persuasive.

IV. AN ALTERNATIVE APPROACH: THE DEEP ISSUE STATEMENT

Although most first-year legal writing courses focus on teaching the one-sentence issue statement, there are other approaches. One that is particularly (and arguably more) effective is the “deep issue statement.”²² At its most basic, the deep issue statement consists of three sentences (premise–premise–question) and should be no longer than seventy-five words.²³

A deep issue statement follows a simple structure: it presents the governing rule, then the relevant facts, and then asks the question. By the time the reader reaches the final sentence, the answer is already suggested by what came before. The deep issue statement structure also avoids awkward phrasing that can arise when trying to fit law and facts into a single sentence.

The deep issue statement improves upon the traditional one-sentence issue statement in two ways. First, it is easier to read because it presents the governing law and key facts before asking the question. This format divides a longwinded single sentence into a few shorter sentences, which is easier for a reader to follow. Second, it can be more persuasive because it gives the writer a bit more freedom to explain the legal standard and frame the facts in a way that naturally suggests the desired answer. Consider these two examples:

²¹ Petition for Writ of Certiorari, *Ocasio v. United States*, No. 14-361 (U.S. 2014).

²² See BRYAN A. GARNER, *THE WINNING BRIEF* 53–97 (2d ed. 2003) (describing the “deep issue” as a structured, context-driven formulation”); ANTONIN SCALIA & BRYAN A. GARNER, *MAKING YOUR CASE: THE ART OF PERSUADING JUDGES* 85 (2008).

²³ GARNER, *supra* note 18, at 75.

Traditional “Whether” Statement:

“Whether there was a violation of the OSHA requiring every incident-investigation report to contain a list of factors that contributed to the incident, when the investigation report on the June 2002 explosion at the Vespante plant listed the contributing factors in an attachment to the report entitled ‘Contributing Factors,’ as opposed to including them in the body of the report?”²⁴

Revised into a Deep Issue Statement:

“OSHA rules require every incident-investigation report to contain a list of factors that contributed to the incident. The report on the June 2002 explosion at the Vespante plant listed the contributing factors not in the body of the report but in an attachment entitled ‘Contributing Factors.’ Did the report thereby violate OSHA rules?”²⁵

The second example, the deep issue statement, is easier to follow because it separates the law, the facts, and the question. By the time the reader reaches the final sentence, the answer is already suggested by the sentences before. Notice too that the deep issue statement, even in its three multiple-sentence form, is actually *shorter* than the single-sentence version.

The advantage of deep issue statements is even more pronounced when the substance of the legal standard must be explained. The deep issue statement provides the space to do so. Consider these examples:

Traditional “Under-Does-When” Format

Under Louisiana paternity law, does a husband have to pay child support for his wife’s child until he proves he is not the father when he did not deny paternity until five years after the child’s birth?

Deep Issue Format

“Under Louisiana law, a husband is presumed to be the father of his wife’s child and must support the child unless he denies paternity within one year of the child’s birth. Rousseve did not deny paternity until five years after Aleigha’s birth. Was he obligated to support Aleigha until he proved that he was not her father?”²⁶

In the one-sentence version, the reader is missing a key piece of the equation: the legal standard. Thus, the reader cannot possibly know the proper answer without reading ahead in your brief. On the other hand, adding a description of the husband presumption would make the first statement too long. The solution is the deep issue statement. By the time the reader finishes the deep issue statement, she would be hard pressed to believe the answer could be anything other than “yes.”

Deep issue statements can also include additional context when helpful. The example below contains five sentences (yes, this is allowed) but is still within the seventy-five word limit:

²⁴ SCALIA & GARNER, *supra* note 18, at 87.

²⁵ *Id.* at 88.

²⁶ *Id.* at 86–87.

“A criminal defendant has the right to be present whenever prospective jurors are questioned on voir dire. During voir dire in this murder case, a prospective juror was questioned by the judge at the bench. Williams was present and positioned so that he could hear the conversation. He asked to approach the bench while the prospective juror was questioned, but his request was denied. Did that denial violate Williams’s right to be present?”²⁷

This format allows the writer to include context that strengthens the overall framing of the issue without sacrificing clarity.

When deciding whether to try the deep issue statement or stick with a more traditional format, consider your audience and their expectations.²⁸ Some courts and professors prefer a single-sentence “question presented,” and in those situations you should follow that expectation. Where a multi-sentence format is permitted, however, a deep issue statement can improve clarity and persuasive force by presenting the law and facts before asking the question.

²⁷ GARNER, *supra* note 18, at 75.

²⁸ Judges are not necessarily wedded to a single-sentence format. See SCALIA & GARNER, *supra* note 18, at 87 (observing that overly long single-sentence issue statements can become difficult to read).