



WRITING THE STATEMENT OF THE CASE IN AN APPELLATE BRIEF¹

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Every component of an appellate brief is an opportunity to persuade the reader, and the Statement of the Case is no exception. The Statement of the Case (sometimes called the “Statement of Facts”) should convey to the reader a persuasive narrative about the factual scenario surrounding the legal action.

Crafting this narrative in a brief requires a somewhat different approach than in a memo. Unlike a legal memo, in which the reader will expect an objective recounting of the factual background, an appellate brief will typically seek to present the facts in a way that is advantageous to the client. But this is not to say that the Statement of the Case should be disingenuous, untruthful, or dismissive of unfavorable facts. Remember that judges will have read both the lower court’s and opposing counsel’s description of the facts. If your version of events is dramatically different from these sources, you may lose credibility. An appellate brief should provide the judges with everything they need to write an opinion in your client’s favor. Therefore, striking the right balance between persuasive advocacy and credibility is crucial.

(1) THEORY OF THE CASE: THE PERSUASIVE FOUNDATION

Incorporating your Theory of the Case. The Theory of the Case is the unifying theme of your client’s case. While the facts explain what happened and the law explains the legal implications of those events, the Theory of the Case should act as an implicit message throughout the brief that helps the reader empathize with your client’s case.

- For example, if you are representing a party injured in a car accident, your legal theory might be that the other driver was negligent, but your Theory of the Case might be that “the driver was in a rush.” In your Statement of the Case, you will want to highlight facts supporting your Theory of the Case—the driver was speeding, late for an appointment, attempting to weave through traffic, etc.

¹ This handout is designed to complement the Writing Center handout titled, “From Memo to Appellate Brief.”

² Original handout prepared by **Brooke Rowland** (2014). Revised by **John Donnelly** and **Perry Cao** (2020).

- Writing an effective Statement of the Case without a clear understanding of your Theory of the Case can be difficult. Therefore, many writers find it helpful to write the Statement of the Case with an objective framing at first. After firmly establishing a Theory of the Case (often through writing the Argument portion of the brief), you can then begin editing the Statement of the Case to reflect that theory and your overall persuasive narrative.
- Utilize the Statement of the Case to shape the reader’s opinion of the “correct” outcome. The most effective briefs will convince a reader before even reaching the Argument. Incorporating themes and details that make your client more likeable or their actions more understandable will help achieve this goal.
 - For example, if your client committed a crime, emphasize anything that would make such a decision seem more excusable or relatable—Was he provoked? Was he trying to protect himself? Was he trying to provide for his family?

(2) BUILDING THE BASIC NARRATIVE

Where you start the story matters. It often makes sense to tell a story chronologically. Nonetheless, a strictly chronological recitation is not always the most persuasive. You may also want to frame the facts in the context that places your client in the most favorable light. What do you want the reader to focus on? If the opposing side is especially unlikeable, you might lead with facts that illustrate this. If your client is the “good guy,” do not make your reader wait until the end of your Statement of the Case to find out.

- For example: “Mr. Smith, who had previously been convicted for tax fraud, stole three televisions from an electronics store on the evening of March 3rd.” Starting the sentence with negative information automatically associates the subject with wrongdoing.

Include all legally relevant facts, even if they do not favor your client. Leaving out key facts undermines your credibility, can make the Argument section confusing, and may violate the Rules of Professional Responsibility. If you discuss a fact anywhere in your legal analysis, it must be in the Statement of the Case. When you fail to include facts that disfavor your client, you lose the opportunity to frame that negative fact—which will inevitably surface in the opposing counsel’s brief—in a way that is less damaging. Ignoring a harmful fact does not make it go away; it simply leaves the problem unexplained and undefended.

- Cases are rarely one-sided, meaning that you will inevitably have to grapple with negative facts. The best way to advocate for your client is to paint these negative facts in the best possible light and frame the narrative to your advantage.
- Don’t be afraid to include non-legally significant facts if they help your client’s narrative.

Do not deceptively characterize the facts. There is a key difference between strategic framing and blatant misrepresentation. Deceptive characterizations damage your credibility. Accurately

state the facts in a way that most favors your client, but do not try to make the Statement of the Case persuasive by being dishonest or deceitful.

The Statement of the Case should not appear biased or overdramatic. Perceived bias and exaggeration can damage your credibility and make the reader less inclined to take your representations at face value. Your job is to tell a story, not write a novel. Vivid language can guide your reader through the narrative more effectively but should be used strategically. If the Statement of the Case becomes too dramatic, readers and judges will not take it seriously.

- **Not:** “Sarah Parker, a moral and upstanding citizen, first met the defendant, Jacob Smith—a suspicious and manipulative real estate agent—at a networking reception.”

Use a subtler approach—one that will lead your reader to the desired conclusion without alerting the reader that this is happening. You can include and frame certain facts such that the reader independently starts viewing the opposing party in the way you want. Bring the reader to this point organically, but do not say it outright.

- **Instead:** “The defendant, Jacob Smith, met Sarah Parker at a networking reception in early July. The following week, Smith began attempting to track Parker’s financial activity. After about a month of monitoring, the defendant encouraged Parker to attend an open house for a property that Smith knew to be out of her price range.”

Portray your client’s position as the “default.” When possible, try to insinuate that your client’s positions or actions are the “default.” This is best illustrated by an example: If your client is being sued for parking in a restricted area, instead of writing “individuals are prohibited from parking in this area, unless... [list exceptions],” you could write “individuals are allowed to park in the area, except... [list restrictions].” By framing the sentence permissively, you alter the reader’s perspective. The reverse is also true: you can frame the opposing party’s conduct restrictively to make their behavior seem anomalous. Importantly, this is simply a matter of strategic framing—avoid making legal conclusions or arguments in the Statement of the Case.

(3) BOLSTERING THE NARRATIVE: ADDING DEPTH AND DETAIL

Grasp and hold the reader’s attention. The Statement of the Case is most persuasive when it reads like a story. This means guiding the reader with strong topic sentences and potentially using headings to facilitate organization. A disjointed or rambling writing style will quickly exhaust the reader’s attention and patience. Instead, you want the reader to glide through the narrative, picking up on positive facts while paying little attention to negative ones. Crafting the Statement of the Case as a story makes it easier for the reader to become invested in your client’s position. It also keeps the reader interested. If the judge reading your brief loses interest before even reaching the Argument section, your client is in trouble.

Use names and titles to vary the reader’s level of attachment to the characters. It may be helpful to refer to the opposing party as “Plaintiff” or “Defendant” and to your own client by their name. Using terms like “Plaintiff” and “Defendant” makes the reader feel more emotionally distant from the character, whereas names feel more intimate. Note, however, that many court rules advise against referring to parties by labels such as Plaintiff/Defendant or Appellant/Appellee.

- The Federal Rules of Appellate Procedure, for example, discourage using “appellant” and “appellee,” but you can still practice this by using a party’s job or vocational title strategically. If you represent the Prosecution, you may refer to the police officer as Officer Monk in order to highlight his authority, but if you represent the Defense you may simply refer to the police officer as Monk.

(4) OTHER CONSIDERATIONS

Include the procedural posture of the case. The procedural history, the nature of the case, and the disposition from the lower court(s) are typically included in the “Statement of the Case.” Always be sure, however, to follow the rule that the court or professor for whom you are writing articulates.

- Note: Rule 28 of the Federal Rules of Appellate Procedure requires briefs filed in the federal courts of appeals to provide one “Statement of the Case” that includes the facts relevant to the issue(s) submitted for review, the procedural history of the case, and the disposition(s) of the lower court(s). *See* Fed. R. App. P. 28(a)(6).

Do not waste space. Be critical in reading each sentence of the Statement of the Case. Every sentence does not have to be inherently persuasive, but each sentence should serve a purpose—even if that purpose is to provide necessary background, transition to a new event, or distract from a negative fact. Additionally, think about proportions. Word counts are important limitations in appellate briefs. Given that the Argument section is the most important part of the brief, the Statement of the Case generally should not take up too much of your allotted space.

Include citations to the factual record. Almost every sentence in your Statement of the Case should be followed by a citation to the specific page(s) of the factual record that supports your statement. This serves as a check to ensure that your representation of the facts is accurate. Note that it is also important to confirm the Statement of the Case includes all factual representations that are then referenced in the Argument section of the brief. The Statement of the Case should provide the reader with a full recounting of the facts such that there are no “new facts” introduced elsewhere.

Step back. After evaluating each sentence for persuasive power and manipulating word choice for maximum impact, step back and simply consider whether the story comes across as a clear,

reasonable presentation of what occurred in the case. This advice is, of course, also applicable to the brief as a whole.