STATEMENT OF THE CASE AND QUESTIONS PRESENTED

January 24, 2006

Notices

- Keep sending Conflicts
- Four-page Draft of Severe and Pervasive Argument due next week
- Next week's class -- 50 minutes
- Bailiff Sign-up posted next Monday
- Juror emails

Questions Presented

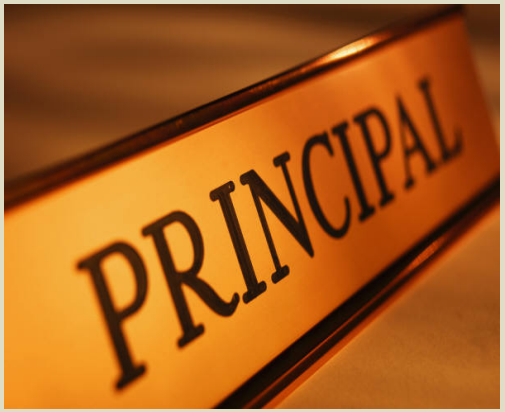
- The Questions Presented set the agenda for the brief and provides the framework that the court will evaluate in reviewing the brief.
- All facts and arguments will be viewed through the lens of the Questions Presented.

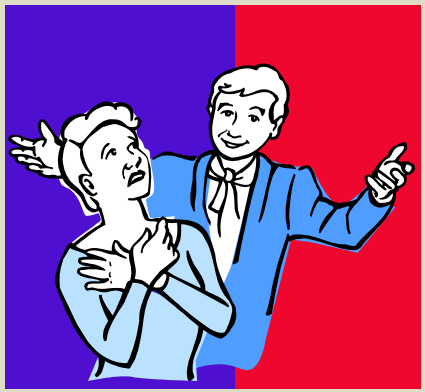
Select the Format

- Choices:
  - Under . . . does . . . when?
  - Whether
  - Direct question (Did . . . ?)
- Pick one and be consistent
- To use the procedural posture or not – you decide

Structure

- Legal Issue
- Governing Law
- Determinative Facts





Tone

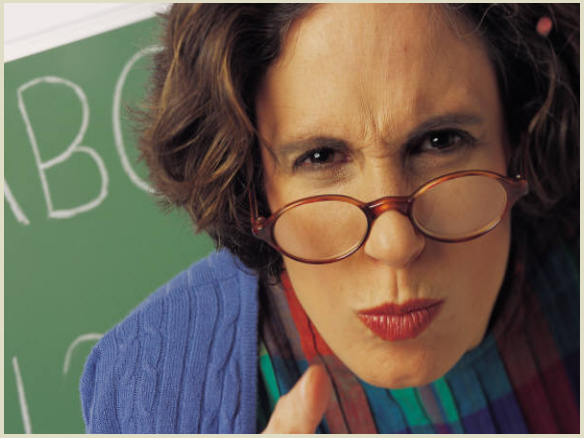
- Draft each Question so that the reader will want to answer “Yes!”
- Be persuasive yet objective.
  - If you sound too argumentative, the court may dismiss your argument
  - Reflect your theory of the case while being reasonable and objective

Focus the Lens

- Frame the facts in a favorable light – one that your opponent may not like but cannot dispute the accuracy
- De-emphasize unfavorable facts – generalize or present in a way that that they don't appear determinative

Don’ts

- Don’t make them so complex that they are unreadable
- Do not state a legal conclusion as a fact – cannot say “school acted (did not act) with deliberate indifference
- Don’t be so general that they are useless – “Did the trial court err in ruling for defendant?”



Examples

- Martha Jacobson

Carter Briefs

- Whether a police officer standing in a publicly used apartment common area, who is able to plainly see an apartment interior, should be required to shield his eyes because the observation would constitute a Fourth Amendment “search”?
- Under the Fourth Amendment, does an officer’s unwarranted and purposeful sight observation into a clearly private residence, made while standing within inches of the apartment and peering through gaps in the covered window of the apartment, constitute an unlawful invasion of curtilage?

- Whether, under Oregon law, an obese employee has a valid claim for Intentional Infliction of Emotion Distress when, after gaining almost 100 pounds, a co-worker seeks to draw attention to the employee's weight problem through office pranks that upset the employee?

- Whether an obese employee is the victim of intentional infliction of emotional distress under Oregon law when a manager, acting as a weight loss counselor, persuades him to divulge sensitivities about his weight which the manager later exploited, causing the victim to become irritable, self-conscious and withdrawn?
- Whether lower court erred in ruling an obese employee did not state a claim for Intentional Infliction of Emotional Distress under Oregon law where the leader of the company's weight loss support group publicly taunted the employee for three months about his weight gain, knowing of the employee's sensitivities about his weight?

CHECKLIST FOR CRITIQUING THE QUESTION PRESENTED

- **Format**
  - **Under-does-when or whether-under-does-when format.**
  - **The same format used for each question presented.**
- **Content**
  - **The Question Presented states the legal inquiry and summarizes the legally significant facts.**
  - **The Question Presented has been framed so it supports the theory of the case.**

CHECKLIST FOR CRITIQUING THE QUESTION PRESENTED

- **Persuasiveness**
  - **The Question Presented suggests an answer favorable to the client.**
  - **The Question Presented emphasizes favorable facts and de-emphasizes unfavorable facts.**
  - **Words have been selected for both their denotation and their connotation.**

CHECKLIST FOR CRITIQUING THE QUESTION PRESENTED

- **Writing**
  - **Question Presented is understandable after ONE reading.**
  - **Punctuation is used appropriately to break question down into manageable parts.**
  - **Parallel constructions are used where required.**
  - **Subject and verb are close together.**
  - **Question Presented is grammatically correct and punctuated correctly.**