Argument and Statement of the Case

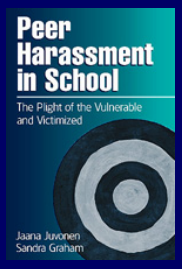
January 17, 2006

Statement of the Case

General Considerations:

- Include all facts, favorable and unfavorable
- Do not underestimate importance
- Must be persuasive AND accurate
- Hold the court's attention
- All facts used in brief must be included in Statement of the Case
- Must cite to the Record

Statement of the Case

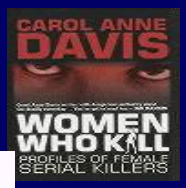


Drafting Persuasive Facts:

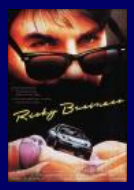
- Describe facts from client's perspective
- Vividly describe favorable emotional facts
- Neutralize opponents' facts by summarizing them
- Organize for emphasis
- Consider tone and word choice

Statement of the Case

- Examples:
- Martha Jacobson
- Legacy v. Oliver
- Craig v.McGraw



Statement of the Case



- Organization
  - Possibilities:
    - -- Chronological
    - -- Topical
    - -- Combination
  - Must reflect "Theory of Case"
  - Consider headings

Types of Legal Issues

- The law is generally clear and the focus is on the application of the law to your facts
- The law and its application are not clear
  - You must first argue what law should apply and why and then argue the application of the law to your facts

Point Headings

- Outline of your argument
- Are persuasive – should be forceful and argumentative
- Complete simple sentences with facts and law
- Each should be freestanding, independent, and complete

Argument - General Considerations

- Do not begin writing until you have thought through your position
- Do not begin writing until you have an outline of your argument
- Be open to moving arguments

Argument- Overall Organization

I. **Argumentative Point Heading One**
[Persuasive Thesis Paragraph]
A. Argumentative Subheading: Element
1. Favorable Statement of Relevant Law
2. Description of Case A
3. Description of Case B, etc.
4. Application of Facts to Case Law
5. Any counter argument?
6. Repeat contention.

B. Argumentative Subheading:
II. Argumentative Point Heading Two

Argument – "Micro" Organization - Writing the Argument by Paragraph

- Persuasive thesis paragraph:
  - Overall contention, incorporating procedural posture if effective
  - Introduce controlling law – Title IX
  - A road map and "set-up"
  - Incorporate theory
  - State contention

Argument- Element level

- Persuasive Point heading:
  - Contention
  - Rule, synthesized to favorably reflect the law
  - Cases
  - Arguments using cases and facts
    - Identify and resolve counter arguments
    - Restate contention

Case Presentation

- Illustrative cases:
  - Include the relevant facts, the court's holding, <u>and its rationale</u> (unless citing a case only for a general legal proposition)
  - Present relevant authority in the light most favorable to your client, but never mislead the court
  - Do not take statements out of context

Case Presentation

Your treatment of a particular case should NOT be interchangeable with your opponent's with respect to:

-- statement of the rule

-- word choice

-- emphasis

Argument – Rule Application

- Applying the facts:
  - Transition to your case and explain and relate the authorities to your facts
  - Show how the court should use the cited cases in your favor
  - Explain why the court in your case should follow the other courts' rationale
  - If a controlling case is bad, explain why it is inapplicable or distinguishable

Counterargument

Generally, do not spend a lot of time on your setting up your opponent's argument to just shoot it down. Be proactive -- focus on your arguments while disposing of the counterarguments.

Counter Authority/Argument

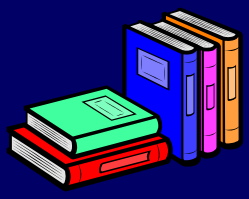
- Do not ignore unfavorable decisions
- Ethical and professional responsibility to disclose all relevant legal authority in the controlling jurisdiction

Responding to Counter-Authority/Argument

- The same result should not be reached under your facts.
- The policy goals emphasized in the adverse case mandate a different result in your case.
- Your case requires an exception to the rule in the adverse case.
- The court's reasoning in the adverse case was faulty

How Much Authority?

- Determine how disputed each issue is
- Determine the level of skeptism of each issue
- Determine importance of each issue



How much Authority?

- You don't want to bore the Court or waste its time with unnecessary citation or presentation of authority
- Goal is to show court your position is well supported without taxing the court's attention

What do Judges Say

- Do not be too argumentative--be authoritative and persuasive, have a theme, use reasonable arguments, discuss leading cases and public policy, explain the importance of legal and factual issues convincingly, discuss the most important issue first, avoid legalese and jargon, edit briefs multiple times, proofread, do not over quote.

Next Week

- Read Harvey Woodley Argument Handout
- Convert Harvey Woodley facts into persuasive Statement of the Case
- Outline Your Argument Section, draft Point Headings and Subheadings and begin drafting Body of Argument Section