



The Most Important Part of a Legal Brief - It's Not What You Think

How to Make the Most Important Section of Your Brief More Persuasive

What section of a brief is most critical to persuading the court to rule in your client's favor? Although most lawyers believe that the argument section fulfills that role, many legal writing experts disagree, maintaining instead that the statement of facts is the most important part of a brief. As Brian Foley and Ruth Anne Robbins explain in *Fiction 101: a Primer for Lawyers on How to Use Fiction Writing Techniques to Write Persuasive Facts Sections*:

We take it as a given that the facts section is the most important part of the brief for persuading judges. The reason is that most judges are moved more by fairness, common sense and compassion to help a person who has been wronged, than by clever legal analysis. The facts section, not the argument section, appeals to judges on this level and, thus, exerts a profound influence on how they decide cases.

In my experience, most lawyers give the facts section short shrift when drafting briefs. Here are three tips for making your statement of facts more persuasive:

- **Include only relevant facts.** Facts that aren't relevant to your argument distract the court from the facts that are relevant.
- **Demonstrate your credibility by including accurate citations to the supporting evidence.** The judge must be able to verify the accuracy of the facts set forth your brief. If you don't tell the judge where to look, the judge isn't going to do your job for you, and may even [comment on your sub-par brief-writing skills in its opinion](#).
- **Use storytelling techniques to boost the facts section's persuasive force.** You can read about many of these techniques below.

Use these storytelling techniques to make the facts section more persuasive.

You've undoubtedly had the experience of reading a book that's so compelling you can't put it down. You can make your briefs more compelling — and therefore more persuasive — to the judges and law clerks who read them by applying in your briefs the same storytelling techniques used by creative writers.

In fiction, stories have three primary elements: **character, conflict, and resolution**. The story you tell in your brief will have characters and conflict: the court's ruling provides the resolution. Your goal is to tell the story so that the resolution will be almost self-evident.

In briefs, you tell your client's story in the statement of facts. You can make your statement of facts compelling by carefully selecting the details you want to call to the reader's attention, arranging the details in a maximally effective way, and using evocative language.



Carefully selecting the details doesn't mean presenting only the facts that favor your client's position. Just the opposite is true: you'll lose credibility if you omit relevant facts from your brief, and the court will give little credence to your legal argument. Nevertheless, as lawyers familiar with appellate brief-writing know, even in a self-contained universe where all facts are established and equally available to both parties, the appellant's statement of facts and the respondent's are often quite different.

Arranging the details in a maximally effective way means giving the story of the case a narrative flow. The classic three-part structure of a story moves from order, to disorder/chaos, to re-order. In brief writing, this structure corresponds to introducing the characters (particularly your client); describing the conflict and its effect on your client; and setting forth the resolution for which you are advocating.

Using evocative language doesn't mean hitting the reader over the head with bombastic, overblown rhetoric. As Bryan Garner and the late Justice Scalia explain in *Making Your Case: The Art of Persuading Judges*, "[i]deally, you should evoke rather than display indignation."

Finally, remember that sensational, inflammatory language tends to arouse skepticism and reduce your credibility. Instead, use vivid words (including powerful verbs) and "show, don't tell": set forth the facts, and let the reader come to an independent (but subtly guided) conclusion about their import.



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About the Author

Lisa Solomon is the Founder and CEO of [Now Counsel Network](#), which helps solos and small law firms slay the staffing dragon by matching them with members of its curated network of experienced freelance lawyers for temporary or project-based engagements. Before launching Now Counsel Network, Lisa practiced exclusively as a freelance lawyer for 20 years, providing legal research and writing services to solos and small firms nationwide. She is a nationally-known author and speaker about freelance lawyering and persuasive legal writing.



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