CHARLES W. FROESSEL
INTRAMURAL COMPETITION
2013

WRITING AN APPELLATE ARGUMENT
FOR A MOOT COURT COMPETITION

MOOT CAMP DAY I
SATURDAY, JUNE 22, 2013
ROOM W401
12:00 P.M. - 1:00 P.M.
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I. INTRODUCTION

Congratulations on your decision to compete in the 2013 Charles W. Froessel Intramural Moot Court Competition! The Moot Court Association Executive Editors created this guide to help you write an effective argument section of an appellate brief. We suggest that you follow these guidelines to prepare your briefs for competition and hope that you will find them useful.

The brief you write will be a complete brief, including all ancillary sections (e.g. Table of Contents, Questions Presented, Opinions Below, Statement of the Facts, Procedural History, Argument, Conclusion, Appendix, etc.). The list of required ancillary sections can be found in the competition rules. This guide focuses only on writing the persuasive argument section, using proper Bluebook citations, and addressing common grammar problems.
II. SCHEDULING

It is **extremely important** that you schedule your time effectively; the Froessel Competition is a big time commitment. We discourage you from waiting to get started until the week before the brief is due. When competing in an actual moot court competition, the first thing a team does is come up with a schedule of deadlines. We suggest that you and your partner do the same for the Frossel Competition. As a guide for approximately how long you should spend researching, writing, and editing, we have included a sample schedule of deadlines.

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III. THE ARGUMENT SECTION

The argument section is the heart of the appellate brief. The argument section is where you attempt to convince the judges of the merits of your case and why they should decide in your client’s favor. It is a legal analysis of the issues presented in the fact pattern. Your ultimate goal is to persuade the court that your argument is the best argument, and that the position you are advocating is the only right way to decide the case.

A. THE CRARC METHOD

Conclusion – Rule – Application – Rebuttal – Conclusion

The CRARC (Conclusion, Rule, Application, Rebuttal, Conclusion) method, which is similar to the CREAC method (Conclusion, Rule, Explanation, Application, Conclusion), is used to structure the argument section of your brief. Use CRARC as a guide for each point, sub-point, and sub-sub point in your brief. Using CRARC will help you to maintain organization of your issues and support for those issues. You may find yourself repeating the same thought or idea in your point headings and in the CRARC conclusion sentences. If so, do not fret. Reiterating your conclusion keeps your reader’s attention focused on the essence of your argument.

CRARC has five elements:

1. **Conclusion**: what the argument will prove
2. **Rule**: relevant statute(s) and/or case law
3. **Application**: the rule applied to the facts to prove your conclusion
4. **Rebuttal**: adverse law distinguished from your case
5. **Conclusion**: restating what the argument proved

| Conclusion | An argument begins and ends with a conclusion. A conclusion is the legal basis for upholding or reversing a lower court’s decision. The conclusion at the beginning of the argument is a reworded point heading. Leave the request for relief (i.e., “this court should therefore affirm/reverse...”) to the ancillary conclusion section at the end of the brief.
| Rule | The rule section of your argument explains the legal principles that form the basis of your analysis. You should rely on cases with facts similar to your case, and outcomes similar to those you are seeking. This section should distill relevant statutes and case law into a rule that, when applied to your facts, will lead to your stated conclusion. The rule section can consist of more than one paragraph. Use parentheticals to explain the support from cases you cite for the rule.
| Application | The most important part of the argument is the application of the rule to the facts of your case. An effective argument includes a skillful comparison of your case to the facts of the cases cited in the rule section. Explain to the reader how the cases and statutory law that supports your rule is relevant to the facts of your case. |
Do not hesitate to break your argument into new sub-points if you realize that your application section is too long or confusing. Sub-points are especially helpful where there are multiple parts of a rule or your argument reaches a natural break.

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| Your argument should include a rebuttal section. The purpose of the rebuttal is two-fold. First, it bolsters your credibility by showing that you are aware of counter-arguments. Second, it allows you to explain why your position is legally correct, despite potential weaknesses. An effective rebuttal states why your adversary’s best arguments are not persuasive. The rebuttal section begins with a thesis and takes one of three general forms: the opposing party has (1) misstated the law; (2) misapplied the law; or (3) derived an illogical conclusion from the application of the law.

*For example:*

1. Petitioner has misstated the holding of *Lawrence* because...
2. Grider v. Abramson is not persuasive authority because...
3. The present case is also distinguishable from *United States v. Abrams* because...

The length of your rebuttal should correlate to the strength of your opponent’s argument. Do not be derisive toward or dismissive of your opponent’s argument; focus on legal and factual errors or logical fallacies to make your point. Do not feel compelled to write a rebuttal unless you have a legitimate argument to make.

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<th><strong>Conclusion</strong></th>
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| The concluding sentence in a CRARC argument should conform to the first conclusion and the point heading of your argument. It is a narrower conclusion than the first because it incorporates the elements of your rule. Again, leave the request for relief to the ancillary conclusion section at the end of your brief.

**B. OUTLINING**

A detailed outline is the key to writing an effective and persuasive brief. Before you begin writing, sit down and brainstorm all of the possible issues and corresponding arguments raised by the fact pattern and organize them into an outline. Once you have settled on your main points, you can begin to structure your argument. Write out your outline using the CRARC method.

You will be presented with multiple legal issues that you must analyze and argue in favor of your client. You should distill every argument you make into a concise point heading. Each major point will in turn be broken down into smaller arguments and sub-points. These point and sub-point headings are the skeleton of your full argument section. It is important to understand and develop your points and sub-points early, and then build in your facts and relevant law to form your argument. Begin your outline by drawing out your points and sub-points and then filling in the facts and law needed to support those points.

Organize your outline into as many sections as necessary in order to effectively and logically construct your argument. For example, if the legal issue presented in the fact pattern requires the application of a
two-pronged test, each prong of the test can be presented as a sub-point to a major point that speaks to
the application and outcome of the test as a whole.

C. POINT HEADINGS

The argument section of a brief begins with a main point heading that clearly and concisely presents the
argument in the form of a conclusion. The point heading should provide an answer to the question
presented as a positive assertion. Each issue requires its own point heading.

The heading must be general enough to encompass all sub-arguments. The point heading is a single
sentence with two parts. The first part states your conclusion and the second part states the basis for that
collection.

POINT HEADING = assertion + because/when + support for assertion

Example:

I. FCC §108 VIOLATES PETITIONER’S RIGHT TO EQUAL PROTECTION UNDER THE 14TH AMENDMENT BECAUSE THE STATUTE MAKES AN UNCONSTITUTIONAL CLASSIFICATION ON THE BASIS OF MENTAL ILLNESS.

Here is an example of how an argument should be structured:

I. POINT HEADING.
   Main Thesis
   A. Sub-Point heading.
      Sub-Thesis
      1. Sub-Sub Point heading.
         Sub-Sub Thesis
      2. Sub-Sub Point heading.
         Sub-Sub Thesis
   B. Sub-Point heading.
      Sub-Thesis
      1. Sub-Sub Point heading.
         Sub-Sub Thesis
      2. Sub-Sub Point heading.
         Sub-Sub Thesis

Here is an example of an outline utilizing sub-points and sub-sub points:

Imagine that the legal issue presented in the fact pattern will require application of a two-pronged test,
where each prong of the test can be broken down into a sub-point. If one of the prongs can be broken
down into more steps, make use of sub-sub points to elaborate on these steps.
NOTE: The use of sub-points and sub-sub points is not required for every legal argument. They should be used only when there is a need to supply specific steps or logical reasoning for the contention of the main point headings and sub-point headings.

I. THE ONLINE STUDENT SPEECH IS PROPERLY RESTRICTED UNDER TINKER, AS IT SUBSTANTIALLY AND MATERIALLY DISRUPTED THE WORK OF THE SCHOOL AND INVADED THE RIGHTS OF OTHERS TO BE LET ALONE, ADVOCATED ILLEGAL DRUG USE BY STUDENTS, AND ALSO CONSTITUTED A “TRUE THREAT” THAT IS UNPROTECTED UNDER THE FIRST AMENDMENT.

A. James’s Speech Is Not Entitled To First Amendment Protection Under Tinker Because The Speech Materially And Substantially Disrupted The Work And Discipline Of The School And Interfered With The Rights Of Others To Be Let Alone.
   1. James’s offensive message materially and substantially disrupted the work and discipline of the school when other students subjected Patel to constant teasing and harassment and caused frequent classroom unrest.
   2. James’s message invaded the rights of Patel by its threatening and defamatory nature and is not entitled to First Amendment protection under Tinker.


C. Speech Advocating An Act Of Violence Against Another Person May Be Properly Classified As A “True Threat” And Is Not Protected Under The First Amendment.

D. PRESENTING THE LAW

After outlining your argument, you will craft it into the full body of your argument section. An effective argument section requires a solid legal foundation. How you choose to present the law of your case will affect the persuasiveness of your argument. The following methods of citing the law each have specific functions and should be employed strategically.

a. Direct Quotations: When a case is available that directly addresses a specific point in your argument, it can be helpful to quote the exact language of the holding. Direct quotations should be used sparingly. While flowery language crafted by another court is tempting to employ in your brief, more often than not it will muddle your argument and distract your reader. Be careful not to use direct quotations for general statements of law.

b. Paraphrasing: An effective way to cite relevant case law is to restate the holdings of supporting cases. It is often less disruptive to the flow of your writing to use your own words than to directly quote supporting cases. Be sure to provide citations, to show that your argument is well founded.
c. **Parentheticals:** Where a case is cited in support of a proposition, it is important to use a parenthetical to summarize the holding. Your parenthetical notation should summarize the portion of the holding relevant to the point you are making as a concise statement of law. The parenthetical is not a full sentence and should omit articles and extraneous language.

   *For example:*

   1. In determining the constitutionality of punitive damage awards, the focus is on the character of the tortfeasor’s conduct and not the dollar amount awarded. See *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 419 (2003) (holding that degree of reprehensibility of tortfeasor is an essential indicator of reasonableness).


d. **String Citations:** String citations can be helpful when you need to demonstrate that you are arguing a well-settled legal proposition. String several citations together that all support the same point. Do not force a string cite by grouping together cases that are only loosely related; this will only highlight inherent weaknesses in your argument. Separate citations with semicolons. String cites should be coupled with parenthetical citations to illustrate the logical connection between the cases you are citing. Don’t forget to check the Bluebook (Rule 1.4) to make sure that you are following the correct order of authorities in your string cite.

   *For Example:*

   1. The Court consistently maintains that it is not the function of the judicial branch to define the parameters of religious practices and activities, nor should the courts “approve, disapprove, classify, regulate, or in any manner control sermons delivered at religious meetings.” See *Rosenberger v. Rector & Visitors of the University of Virginia*, 515 U.S. 819, 844 (1995) (“…official censorship would be far more inconsistent with the Establishment Clause’s dictates than would governmental provision of secular printing services on a religion-blind basis.”); *Widmar v. Vincent*, 454 U.S. 263, 272-73 (1981) (holding that when a university opened its facilities for use by student groups, the university was constitutionally barred from excluding groups based on their religious speech.); *Fowler v. Rhode Island*, 345 U.S. 67, 70 (1953).

**BINDING v. PERSUASIVE AUTHORITY**

a. **Binding Authority:** When appealing to any court, it is essential to understand the difference between binding and persuasive authority. Cite relevant decisions of the same or higher courts when possible because this precedent binds the court.

b. **Persuasive Authority:** Moot court fact patterns typically present issues of first impression, which means you will not find binding authority directly on point with your case. As a result, you will have to look to other sources of authority, such as lower or parallel court opinions. These cases are persuasive authority because the court is not obligated to follow them but can consider them in reaching a decision. Analogize to these cases to persuade the court to adopt your argument, or distinguish these cases from your argument to limit their negative impact.
IV. ARGUMENT SAMPLE

The following is an example of a sub-point argument, written using the CRARC structure. Some of the more common Bluebook citation forms have been highlighted to demonstrate their usage (for more information, see Section V, “The Bluebook”). Many of the references utilize short-form citations. These should always be preceded by full citations, though they are not within this extract.

1. The restriction on Kramer’s free speech did not serve an interest in maintaining national security.

   The City did not further a compelling government interest by removing Kramer’s art exhibit. The government undoubtedly has a compelling interest in maintaining national security. See Ressam, 221 F. Supp. 2d at 1263-64. **A restriction on speech, however, cannot serve an interest in security when the claimed danger or concern is speculative or non-existent.** Bay Area Peace Navy v. United States, 914 F.2d 1224, 1228 (9th Cir. 1990) (**holding that general fear of terrorist threat, without evidence, is insufficient justification for restricting speech**). Indeed, this Court, nearly a half-century ago, noted that “undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.” Tinker, 393 U.S. at 508.

   The City’s restriction on Kramer’s speech failed to serve an interest in national security because Kramer’s exhibit was confirmed to be harmless, presenting absolutely no danger to the public. (R. at 1). With the official elimination of any apprehension of danger, the City’s interest in promoting security was rendered inapplicable. Additionally, there is no evidence of past threats of terrorist activity in Moss Square to raise the City’s concerns beyond conjecture. **Cf. United For Peace & Justice v. City of New York, 243 F. Supp. 2d 19, 25 (S.D.N.Y. 2003)** (upholding content-neutral ban on marching at United Nations after September 11, 2001, because of several attempted terrorist attacks). Moreover, Moss Square does not possess the eminence or prestige of a federal building to justify a heightened concern over it being targeted by terrorists. See White House Vigil for the ERA Committee v. Clark, 746 F.2d 1518, 1533 (D.C. Cir. 1984) (**protecting White House justifies “greater limitation than would be applicable generally to use of public streets and parks”**). Consisting of only fountains and being surrounded by privately owned businesses, Moss Square does not possess any national landmark or monument that would call attention to itself. (R. at 3). Although soft targets—attractive venues without any particular significance—may draw terrorists, they are ubiquitous in our country and restricting speech in all such places would eviscerate the First Amendment. **Thus, the unremarkable history and character of Moss Square, and the confirmed absence of a terrorist threat eliminated any justification for restricting speech in the name of national security.**
V. THE BLUEBOOK

Pick up a copy of *The Bluebook: A Uniform System of Citation (19th Ed.)*. The Bluebook citation tips contained in this packet are not comprehensive. Refer to the Bluebook for questions not answered here. Look through the table of contents to get an idea of how the Bluebook is organized. Also, one of the most helpful sections of the Bluebook is the index. If you are looking for the rule on how to cite a particular source, and you are not sure where in the Bluebook to find the rule, always try looking in the index.

A. CASES (RULE 10)

a. Full Citations

The first time you cite a case, include (1) the name of the case; (2) the volume number and the reporter in which the case may be found; (3) the first page on which the case begins; (4) the page number on which the reference is found; (5) a parenthetical indicating the court and year of decision; (6) other parenthetical information, if any; and (7) the subsequent history of the case, if any.

- Abbreviate case names according to Table 6, found on p. 430 of the Bluebook.
- Cite only to the primary reporter for a jurisdiction recommended in Bluebook Table 1 (found on p. 215 of the Bluebook); do not include parallel citations.
- Subsequent history should be included unless it is a denial of certiorari or rehearing and the case was decided more than two years ago. (Rule 10.7)

**Holland v. Donnelly, 216 F. Supp. 2d 227, 230 (S.D.N.Y. 2002), aff’d, 324 F.3d 99 (2d Cir. 2003).**

**Green v. Georgia, 442 U.S. 95, 97 (1979) (holding that exclusion of relevant evidence at sentencing hearing constitutes denial of due process).**

b. Short Citations

Once you have provided one full citation you can use short cites as long as (1) it will be clear to the reader from the short form what is being referenced; (2) the earlier full citation falls in the same general discussion; and (3) the reader will have little trouble quickly locating the full citation.

**Green, 442 U.S. at 97.**

**Id. at 502, or Id.**

Use this when the short cite does not directly follow the full cite.

Use this only when the last case you cited was the same case.

c. Pinpoint Citations

Use when citing to a specific page(s) or proposition stated within the case decision. The pinpoint can be used when fully citing the case, or in a short citation.

**Baker v. Carr, 369 U.S. 186, 195 (1962).**

**Shah v. Leonard, 784 F.2d at 1215-16.**

*Full citation*

*Short citation*
d. Court and Year of Decision

Comes after the page reference separated by one space. Look to Table 10 on p. 436 in the Bluebook to see court abbreviations for each state. When citing to a United States Supreme Court case, include only the year.

**Meritor Sav. Bank v. Vinson, 477 U.S. 57, 60 (1986).**

e. Pending and Unreported Cases (Rule 10.8.1)

There are special rules for cases that appear only on Lexis or Westlaw. Look to Rule 10.8.1 for guidance.


B. In-Text Citations

End each sentence with a period. The case name comes after the period and is capitalized. The case name can be underlined or italicized, but not both. Choose either method, but remain consistent throughout your entire brief. The citation also ends with a period.

Executory contracts involve obligations by both parties and require that at least one party have a duty to perform a future obligation. See Sloan v. Hicks, 761 F.2d 319, 321 (6th Cir. 1985).

C. Multiple Cites (Rule 1)

When citing more than one authority (“string citing”), separate citations with semicolons. If one authority is considerably more authoritative than the others, cite it first. If not, the order of authorities is: constitutions; federal statutes; state statutes; federal cases (in order of descending authority); state cases (alphabetically by state, then in order of descending authority); legislative materials; court and litigation documents; books and pamphlets; journal articles; and magazine and newspaper articles. Look to Rule 1.4 of the Bluebook for guidance.

There is a liberal policy favoring the validity of arbitration agreements and any questions “are generously construed as to issues of arbitrability.” Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 626 (1985); see also Black v. NFLPA, 87 F. Supp. 2d 1, 5 (D.D.C. 2000).

D. Parenthetical Information (Rule 1.5)

Parentheticals are an important tool when citing to cases or authority because they explain to the reader why and how the authority is relevant to the point you are making. Parentheticals generally begin with a lower case present participle such as “holding” or “finding,” and are found in these general formats.

See Wilsey v. Beyer Mut. Life Ins., 10 U.S. 200 (1921) (holding that the eyesight damage from law school was not recoverable under the Georgetown health plan).
E. INTRODUCTORY SIGNALS (RULE 1.2)

a. **Nothing.** No signal should be used when (1) an authority directly states the proposition; (2) the authority is the source of a quotation; or (3) an authority is referred to in the preceding text.


   > The Supreme Court has stated that the principle of equal access to government is “central” to “our constitutional tradition.” *Romer v. Evans*, 517 U.S. 620, 633 (1996).

b. **See.** Should be used to introduce an authority that clearly supports but does not directly state the proposition.

   > The Sixth Amendment’s guarantee of the right to assistance of counsel ensures that criminal defendants without legal training are not left to fend for themselves in our complex system of criminal justice. See *Powell v. Alabama*, 287 U.S. 45, 69 (1932).

c. **See also.** Cited authority constitutes additional source material that supports the proposition. “See also” is commonly used to cite an authority supporting a proposition when authorities that state or directly support the proposition already have been cited or discussed.


d. **See generally.** Cited authority presents helpful background material related to the proposition.


e. **E.g.** Cited authority states the proposition; other authorities also state the proposition, but citation to them would not be helpful or is not necessary.

f. **See, e.g.** Should be used to introduce an authority that is one of multiple authorities (or multiple jurisdictions) to clearly support the same proposition.

Federal courts have consistently held that statutory claims of employment discrimination can be subjected to mandatory arbitration. *See, e.g.*, Circuit City Stores, Inc. v. Adams, 532 U.S. 105, 123 (2001).

### F. ORDER OF SIGNALS (RULE 1.3)

When you use more than one signal in a string cite, the signals should be listed in the order in which they appear in Rule 1.2. *See* would precede *see also*, etc. Additionally, signals of the same type (i.e., all signals indicating support, comparison, contradiction, or the provision of background information) should be strung together in a single citation sentence, using semicolons to separate them. However, different types of signals (i.e., contradictory authority cited after supporting authority) must be grouped in separate citation sentence.

### G. ORDER OF AUTHORITIES WITHIN EACH SIGNAL (RULE 1.4)

Rule 1.4 states the hierarchical order in which different authorities should be listed within one signal. For example, constitutions are listed before statutes, which are listed before cases, and so forth. Additionally, within each class of authority, Rule 1.4 indicates how different subclasses should be ordered: federal cases before state cases, the U.S. Constitution before state constitutions, etc.

Note that Rule 1.4 gives you flexibility: it specifically allows you to break the indicated order of authorities if one authority is considerably more helpful than the other or if you have some other substantive reason to break the rule's order. Therefore, if you find an older case that is more helpful to your argument than a more recent case, you can list the older case first, notwithstanding Rule 1.4(d).

Cite to the cases for each set of courts in *reverse chronological order* (i.e. the most recent first).

### H. CONSTITUTIONS (RULE 11)

Include “U.S.” or the abbreviated name of the state (as indicated in Table 10) and the word “Const.” Abbreviate the subdivisions of constitutions, such as article and clause, according to Table 1.6.

U.S. Const. art. I, § 9, cl. 2.
U.S. Const. amend. XIV, § 2.
U.S. Const. pmbl.

*Note: For appellate briefs, you should *not* use small caps when abbreviating “Const.”

### I. STATUTES (RULE 12 & TABLE 1)

Include (1) the official name of the act; (2) the published source where the act may be found; and (3) a parenthetical indicating the year the source was published or the statute was passed. Do not underline.

**J. RECORD CITES**

Provide references to the record (the fact pattern) as parenthetical citations.

(R. at 9). As with all parenthetical notation, final sentence punctuation belongs outside the parentheses.

**K. LAW REVIEW ARTICLES (RULE 16)**

Include (1) author; (2) title of work; (3) volume number; (4) abbreviated periodical name; (5) first page of article; (6) pinpoint; (7) year of publication.


**L. TABLES**

Near the back of the Bluebook, you will find the Tables. These pages are edged in blue. The Tables provide information such as citation conventions and abbreviations. Some of the Tables you will probably find helpful while writing your Froessel brief are:

a. **T.1: United States Jurisdictions**
   Includes abbreviations and citation conventions for United States jurisdictions

b. **T.6: Case Names**
   Abbreviate case names by abbreviating any word listed in this section, for example:

<table>
<thead>
<tr>
<th>And</th>
<th>&amp;</th>
<th>Associate</th>
<th>Assoc.</th>
<th>Department</th>
<th>Dep’t</th>
</tr>
</thead>
<tbody>
<tr>
<td>America</td>
<td>Am.</td>
<td>Association</td>
<td>Ass’n.</td>
<td>Government</td>
<td>Gov’t</td>
</tr>
</tbody>
</table>

c. **T.7: Court Names**
   Includes abbreviations for court names

d. **T.9: Legislative Documents**
   Includes suggested abbreviations for citation of the words most commonly found in legislative documents, for example:

   |-----------|-------|-------|---|---------------|------|

e. **T.10: Geographical Terms**
   Includes abbreviations for commonly used geographic terms
f. **T.13: Periodicals**  
Includes abbreviations for periodical names, for example:

<table>
<thead>
<tr>
<th>Periodical Name</th>
<th>Abbreviation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitutional Commentary</td>
<td>Const. Comment.</td>
</tr>
<tr>
<td>Yale Law Journal</td>
<td>Yale L.J.</td>
</tr>
<tr>
<td>ABA Journal</td>
<td>A.B.A. J.</td>
</tr>
</tbody>
</table>

*Note:* T.13 gives abbreviations for periodicals in small caps. However, for appellate briefs, you should *not* write the abbreviation in small caps.

g. **T.16: Subdivisions**  
Includes abbreviations of names of document subdivisions frequently used in legal citations, for example:

<table>
<thead>
<tr>
<th>Subdivision</th>
<th>Abbreviation</th>
</tr>
</thead>
</table>
| Amendment[s]                 | amend., amends.
| Appendi[s, ces]             | app., apps.    |
| Preamble                     | pmbl.          |
| Subsection[s]               | subsec., subsecs.|

**M. Quick Reference**

On the last page and inside back cover of the Bluebook, you will find the section “Quick Reference: Court Documents and Legal Memoranda.” These two pages provide examples of commonly cited sources in the proper format for appellate briefs. They are a handy guide for how the various Bluebook citation rules apply to your brief. However, remember that the Quick Reference is not exhaustive. If you are in doubt about a certain citation format, look up the full rule in the body of the Bluebook.
EXERCISE 1:

Put the following citations in proper Bluebook format.

4. Edwards v. City of Houston, 37 F. 3d 1097 (5th Circuit 1994)
7. U.W.M. Post, Inc. Board of Regents, 774 F.supp. 1163 (ED Wisconsin 1991)
9. U.S. Constitution Art I, § 9, clause 2
12. Federal Rule of Civil Procedure 56
VI. Grammar Guide

Pay careful attention to grammar and syntax in your writing. When writing your brief, your focus will be on the substance of your argument, but the way you express your ideas is just as important. The following is a catalog of selected common problems, in general and in legal writing. For a good primer or refresher on writing technique, pick up a copy of Strunk and White’s *The Elements of Style*.

A. Active vs. Passive Voice

The “voice” of a sentence describes the relationship between its subject and its verb. In an active sentence, the subject does the action. In a passive sentence, the subject is acted upon.

Although there are occasions when use of the passive voice is appropriate, it is a good idea to write as much of your brief as possible in the active voice. This ensures that your writing is stronger and more persuasive, and keeps your writing from sounding dull and wordy.

Here is an example of how to turn a passive sentence into an active sentence. To do this, we must convert the *object* into the *subject*:

\[
\text{The cookie was eaten by Cookie Monster}\\
\text{(subject) (verb) (object)}
\]

We also need to convert the verb “was eaten” into its more active form by removing the –en or –ed ending.

\[
\text{Cookie Monster ate the cookie}\\
\text{(subject) (verb) (object)}
\]

---

1 See the grammar guide at the following link for more detailed guidance on common grammar problems. http://grammar.ccc.commnet.edu/grammar
EXERCISE 2: Identify the following sentences as active or passive.

1. Petitioner’s Fourth Amendment rights were not violated by the NSA Terrorist Surveillance Program.
2. The United States District Court for the Southern District of Froessel convicted Johnny Drama of providing material support to terrorists in violation of 18 U.S.C.§2339A.
3. This Court has assumed that the AUMF activated war powers vested in the President as Commander-in-Chief.
4. The Government’s interest in rapidly detecting and preventing terrorist attacks is effectively promoted by the NSA’s Terrorist Surveillance Program.

EXERCISE 3: Change the following sentences to the active voice.

1. A Republican will be elected as mayor by the public next year.
2. A batch of cookies was made by my son this morning.
3. The subway fare will be raised to $1.50 next week by the city.
4. The play has been called witty and warm by well-known and knowledgeable critics.
5. The pumpkin was tossed off the bridge by that group of trick-or-treaters.
6. My book was dropped off at the library.
7. An example of a passive sentence was demanded by the professor.
8. The guitar was played by the musician.

B. COMMA RULES

a. Use a comma to separate an introductory phrase from the rest of the sentence.
   In other words, if there is a group of words at the beginning of the sentence that seems to be introducing more information, set it off with commas to make it clearer. Placing a comma after introductory phrases signals to the readers that they are about to learn more about the subject. Here’s an example:

   After Sarah and Janna went ice skating, they went to the mall.

   If you read the sentence aloud, you can sometimes hear that a phrase is acting like an introduction. If it is, follow it up with a comma.

b. Use commas between all items in a series, including before the coordinating conjunction.

   For Thanksgiving, Allison’s grandmother made turkey, sweet potatoes, green beans, and apple pie.

   Many students feel that the comma before the coordinating conjunction is not needed, but it is.

c. Use a comma before the word which in a sentence.
   Descriptive information introduced by the word which is not considered essential to the meaning of the sentence, and it is set off with commas.

   Devon’s garden, which is full of flowers, is located on the side of her house.
The fact that the garden is full of flowers is a nice description, but it has nothing to do with the fact that it is located on the side of her house.

d. Never separate the subject of a sentence from its verb with a comma.

Incorrect: Many fans who attend football games, bring blankets and radios.
Correct: Many fans who attend football games bring blankets and radios.

e. Use a comma before a coordinating conjunction that joins two sentences. Do not place a comma after the conjunction.

Incorrect: Keith likes the color orange but he doesn’t like oranges.
Incorrect: Keith likes the color orange but, he doesn’t like oranges.
Correct: Keith likes the color orange, but he doesn’t like oranges.

If you do not use a comma in the example above, the sentence is a run-on.

f. Commas and periods go inside the quotation marks (except in the case of parenthetical notation).

"This box is too heavy," Anna said. "I think I might drop it."

While most punctuation belongs inside of quotation marks, this is not the case with parentheses.

Anna said, "This box is too heavy." (Smith at 8).

g. “Which” is preceded by a comma and “that” is not.

The books, which have red covers, are new.
The books that have red covers are new.

C. COMMONLY MISUSED WORDS

a. “Since” vs. “Because”

“Since” is used to indicate a time lapse.
“Because” is used to indicate a cause-and-effect relationship.

I have been hungry since my last meal.
I lost the tennis match because of my poor underhand stroke.

b. “Bad” vs. “Badly”

If you would not say “I feel madly” or “I feel sadly,” do not say “I feel badly.” To say you feel “badly” implies there is something wrong with your sense of touch, as opposed to saying you feel “bad,” which directly expresses an emotion.

I smell bad.       Bad is an adjective.
I smell badly.  

*Badly* is an adverb that modifies the verb *smell*.

c.  **“Which” vs. “That”**

Whether to use “which” or “that” depends on the type of information being conveyed. “That” provides identifying, restricting information about the subject, and “which” simply provides additional information.

*The gorilla that we saw weighed 500 pounds.*  
*The gorilla, which is a large animal, lives in the jungle.*

---

**D. SEMICOLONS**

The semicolon has two main purposes: (1) to separate items in a list that include subgroups separated by commas, and (2) to connect two or more phrases in a sentence that are closely related but have no coordinating conjunction.

For connecting two or more phrases in a sentence, if the two phrases can be broken into two separate, short sentences, a semicolon may be used. Each phrase must be complete (i.e., each phrase has a subject and a verb) and relatively short.

a.  **Separating list items with commas**

   *James had a small, brown dog; a long-haired, fat, black cat; and several parakeets.*

   *The committee consisted of Tom Smith, chairman of the board of directors; Jane Grey, former Woman of the Year; and Henry Miller, former plant overseer in Michigan.*

b.  **Connecting two phrases**

   *We knocked on the door; however, no one was there.*  
   *He said, "No, I won't go"; I was very disappointed.*

c.  **Incorrect use of semicolon**

   *We knocked on the door; but no one was there.*

   ("But" is a coordinating conjunction. A comma would be used in this case.)

*Note:* The semicolon generally belongs **outside** final quotation marks.

---

**E. PREPOSITIONS**

Prepositions are words that describe relationships between other words in a sentence with respect to time and space. Many prepositions are actually prepositional phrases; a combination of words serving the same purpose as an independent preposition. The following paragraph provides examples of both.
You can sit before the desk (or in front of the desk). The professor can sit on the desk (when he's being informal) or behind the desk, and then his feet are under the desk or beneath the desk. He can stand beside the desk (meaning next to the desk), before the desk, between the desk and you, or even on the desk (if he's really strange). If he's clumsy, he can bump into the desk or try to walk through the desk (and stuff would fall off the desk). Passing his hands over the desk or resting his elbows upon the desk, he often looks across the desk and speaks of the desk or concerning the desk as if there were nothing else like the desk. Because he thinks of nothing except the desk, sometimes you wonder about the desk, what's in the desk, what he paid for the desk, and if he could live without the desk. You can walk toward the desk, to the desk, around the desk, by the desk, and even past the desk while he sits at the desk or leans against the desk.

All of this happens, of course, in time: during the class, before the class, until the class, throughout the class, after the class, etc. And the professor can sit there in a bad mood [another adverbial construction].

The most important, and hotly debated, rule regarding prepositions is this: Never end a sentence with a preposition. It is only appropriate to end a sentence with a preposition when remedying the mistake would sound clumsy or awkward.

\[ I \text{ could not tell where the leak was coming from, sounds better than, I could not tell from where the leak was coming, which is technically correct. } \]

However, Indicate the source you are quoting from, is better written as, Indicate from which source you are quoting.

**F. Style Suggestions**

a. **Avoid unnecessary modifiers.** Do not use terms such as “virtually clear,” “virtually certain,” “clearly,” or “obviously.” Besides sounding insulting to the court, had everything been so clear or certain, you would not be appealing your issues to the court.

b. **Use short words, short sentences, and short paragraphs.** The less obtuse your language and writing are, the easier it will be to follow (and read) the logic of your argument. Avoid using legal jargon, clichés, and “throat clearing words” (such as “it is important to note,” “it is significant that,” etc.)
VII. RESEARCH ADVICE

A. QUICK TIPS

Traditional Research: Most of the cases, statutes, and other information you will need for writing your brief will come from research on Lexis or Westlaw. Either site will work for writing your brief; however, each has different strengths.

Lexis: better for learning case histories (Shepardizing) and legislative histories of statutes; good for quick summaries of cases
Westlaw: better for general searches using the key cite system and more links within documents to other helpful sources

Internet Research: This type of research can be used to supplement the information you learn from Lexis or Westlaw and can add persuasive references to your brief. Here are some suggestions of other sites to check out:

- Google News (archives newspapers and broadcast news for free)
- Online newspaper archives
- Polls/surveys (Gallup, Pew Research Center)
- Government websites, including speeches, press releases or statements from those agencies (FBI, FCC, etc.)
- Thomas.gov (the Library of Congress’s website which also includes bill text, legislative history, and floor debates)
- HeinOnline (law reviews/journals, can be accessed through the library website)
1. What are you trying to find? What is the legal issue? What is the general rule(s) of law you need to find? What are the basic concepts that define the issue?

[You should be able to write out your legal issue in one or two sentences. You can come back and edit it as you get more information. Writing it down will help you think through indexing terms, concepts, etc.]

2. What information do you have about the problem?

   - Do you have any citation leads?
     - Statutes?
     - Case(s)?
     - Digest topic & Key number information?
     - Jurisdiction?

3. Think about the type of sources that might be helpful. Where should you start? How much do you know about the topic?

   - Starting with an encyclopedia or treatise can help to ground you and provide a good introduction to the issues/statutes/cases and how they interrelate.

   - The Library catalog (http://www.lawlib.nylsl.edu) will give you a list of treatises, encyclopedias, and other sources. The catalog will give you the Call Number so that you can find it in the stacks. If a source is online, the catalog will give you a link to the database. (Ask a librarian for help.)

     - If you have the name of the source (e.g., New York Jurisprudence), search by title. For example: Title: New York Jurisprudence

     - If you do not know the name of a book, search by keyword. For example: Keyword: New York Negligence
4. **Find the Secondary Sources.** Once you find the book, use the Index to find the sections you should read. What are “good” index terms? Review your issue statement (step 1) & see step 5. If you listed a statute or a case name in step 2, check the Tables sections to find specific discussion of that case / statute.

- New York Jurisprudence and many treatises have a Table of Statutes & Regulations and a Case Name Table as part of the index. These tables will tell you where the statute, regulation or cases are discussed in the text.

  **Encyclopedia Topic:**
  - An encyclopedia will give you a good overview and help you identify the controlling statute or leading case to work from to find more cases. This is always a great place to start a research project.

  - *Take Notes:* Key “terms of art,” cases or statutes mentioned, Digest Topic or Key Numbers listed, references to A.L.R. articles.

  **Leading Treatise on the Topic:** (Author / Title / Call Number).
  - The Librarians can guide you to the “leading” treatises on various subjects. Don’t hesitate to ask.

  - Treatises are written to explain the law and help you gain a better understanding of the rules and issues. They are more in-depth than encyclopedias. They will help you broaden your understanding of issues.

  - *Take Notes:

5. **Identify the Individual Concepts Within the Issue That Must Be Discussed in a Document for It to Be Relevant to Your Research.** These will be INDEX terms to use in the statutes, digests or other secondary sources. These terms are also the key to Lexis and Westlaw searching. Consider the ways in which the concepts might be stated: “terms of art” or “general descriptions.” Think about synonyms and alternative expressions. Keep a running list of new terms of art / concepts that you did not think of initially. [Remember: First look for the “general rules.” Searches that are too fact-pattern-specific will almost always exclude relevant material. You may need to argue by analogy or argue from the opposite side of an issue.]

<table>
<thead>
<tr>
<th>Relevant Concepts</th>
<th>Synonyms &amp; Alternative Expressions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

6. **Find More Cases: KeyCite / Shepardize:** Once you find a “good” case:
   a. *make sure it is still good law;*  
   b. *determine how subsequent cases have “treated” the court’s reasoning or holding: Followed? Explained? Distinguished? Questioned?*
   c. *find MORE cases. These are great case-finding tools. Note the citations that look interesting / worth investigating? REMEMBER you can search within the “citing references” for particular words, headnotes, topics, depth of treatment.*

7. **Review Your Notes on the Cases and Statutes You Have Read. Edit Your Legal Issue. Have You Answered All the Necessary Questions?**
VIII. EXERCISE ANSWER KEY

Exercise 1:

4. Edwards v. City of Houston, 37 F.3d 1097 (5th Cir. 1994).
5. Janowiak v. Corporate City of South Bend, 836 F.2d 1034 (7th Cir. 1991).

Exercise 2:

1. Passive
2. Active
3. Active
4. Passive
5. Passive

Exercise 3:

1. The public will elect a Republican mayor next year.
2. My son made a batch of cookies this morning.
3. The city will raise the subway fare to $1.50 next week.
4. Well-known and knowledgeable critics have called the play witty and warm.
5. A group of trick-or-treaters tossed the pumpkin off the bridge.
6. I dropped my book off at the library, or Someone dropped my book off at the library.
7. The musician played the guitar.