

Appellate Advocacy

By David Coale

This e-book collects eight short articles that I have written in recent years about aspects of appellate advocacy. I hope that it provides good insights for younger lawyers who are developing their craft, as well as older ones who may be looking for some fresh ideas.

The articles retain their original perspectives and references to technology at the time of writing. They have been lightly edited for typographical errors and a consistent presentation.

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AI and the Limits of the New Introduction Rule in Petitions for Review

Texas Lawbook • January 26, 2026

A 2026 rule amendment by the Texas Supreme Court mandates that petitions for review begin with an introduction of no more than 1,000 words explaining why review should be granted.

At first glance, the rule seems sensible, given the hundreds of petitions that the court must promptly review every year. But that perceived benefit may be illusory. In a world shaped by generative AI and search-driven reading habits, the traditional importance of the appellate introduction is already fading.

And if the rule encourages lawyers to spend time on introductory “spin” rather than substance—which generative AI can now easily identify, organize and summarize—it could actually be counterproductive.

The main benefit of a required introduction is to give the court a quick overview of the case and the reasons review is warranted. The need for such a summary is great if the only other way to get that overview is to scour the many pages of argument that follow.

That is no longer true. Today, any justice or clerk can review a petition with a quality AI tool and generate a summary, issue list and outline in seconds. The result may lack polish, but it is fast and, if the generative AI system is handled correctly, will be reasonably objective—certainly enough for a quick orientation.

Put simply, introductions no longer save much time. A reader can now create a summary faster than it takes to read one.

At the same time, younger readers approach information differently than older ones. For many years, I had paper folders organized topically and alphabetically for all my cases. Younger lawyers and clerks who have never organized information in such a way do not think in terms of filing cabinets or neat linear structure. They search for what interests them. With that audience, persuasion does not turn on a carefully staged opening narrative. It turns on what the reader finds when they go looking.

Given the realities of a modern audience, successful use of the required introduction requires a balanced approach to drafting. Spending too much time polishing a long introduction—in a time when readers increasingly bypass it with AI and search functions—raises the risk of a mismatch between the introduction and what follows. And that mismatch will be apparent to modern readers who can easily create their own summary of the petition's substantive arguments.

Of course, AI can also help solve this problem, as it allows the author to continually check for consistency between the introduction and body of a petition. But that only underscores the broader point: The introduction is no longer the controlling feature of a legal brief.

At the start of the 1970s, the Keuffel and Esser slide rule was the top of the line. But its sales would soon collapse when electronic calculators made it obsolete. The math did not change. The bottleneck did.

The same shift is underway with appellate introductions. They still require skill to write well, and they still provide benefit as a summary and overview. But the introduction bears far less load than it once did, and it will likely matter less over time as AI tools improve and today's clerks become tomorrow's judges.

In response to the new rule, advocates should offer introductions that are clear, direct and restrained—long enough to do the job but no longer. The real work of persuasion remains where it has always been: in the law, the record and the reasoning. And with modern technology, that material is far more accessible than it has ever been.

Fifth Circuit Sanctions Opinion Gives Practical Advice for AI Use

Texas Lawbook • February 19, 2026

In *Fletcher v. Experian Information Solutions, Inc.*, the U.S. Court of Appeals for the Fifth Circuit sanctioned a lawyer \$2,500 for filing a reply brief with several “hallucinated” case citations and then providing evasive responses to the court when it asked the lawyer about those references. Chief Judge Jennifer Elrod wrote the opinion, which was published Feb. 18, and was joined by Judges Jerry Smith and Cory Wilson.

The opinion provides a strong statement about the Fifth Circuit’s view of this highly relevant topic, as well as practical pointers to avoid this kind of problem going forward. The underlying dispute was a claim for alleged violations of the Fair Credit Reporting Act against a lender and a credit reporting agency. The district court sanctioned plaintiff’s counsel for \$33,000, concluding that he “had not done even a minimal investigation” before filing suit. Counsel appealed. The Fifth Circuit vacated the order and remanded for further proceedings in which counsel would have “a greater opportunity to defend his pre-suit investigation.”

So far, so good. But the reply brief filed on behalf of the attorney in the Fifth Circuit contained a number of misstatements, leading the court to suspect overreliance on generative AI. Accordingly, the court “issued a show-cause order, enumerating 16 issues of fabricated quotations and 5 additional serious misrepresentations of law or fact.”

The attorney who signed the reply brief responded, saying that she “relied on publicly available versions of the cases, which [she] believed were accurate.” Unimpressed, the Fifth Circuit requested further information, which led to a grudging admission of generative AI use to “help organize and structure” her argument. Now even less impressed, the court sanctioned the attorney \$2,500, citing the court’s inherent power and Fed.

R. App. P. 46(c), which addresses “conduct unbecoming a member of the bar.”

Unfortunately, despite vast improvements in generative AI technology since the introduction of ChatGPT in late 2022, and despite widespread publicity of similar cases across the country, this sort of situation continues to arise. The opinion offers three practical suggestions going forward.

Don’t eat soup with a fork.

The opinion acknowledges that the use of generative AI “can be helpful if done properly and carefully.” Using an off-the-shelf, general-purpose large language model such as ChatGPT for legal research is inviting trouble. Westlaw offers a high-quality research product that minimizes hallucinations by limiting the LLM’s focus to its database of case authorities, while providing hyperlinks to every case cited to make review easy. Other such products abound. A carpenter would not use a screwdriver instead of a hammer to drive a nail, and a conscientious lawyer should also not use the wrong tool for the task.

Don’t ignore red flags.

The Fifth Circuit’s show-cause order identified 21 material errors in the reply brief. Several of those errors involve repeated, erroneous citations to the same two cases. At minimum, when you cite the same case multiple times in a filing, you should take particular care to review it. More broadly, when an LLM repeatedly cites the same case for similar-sounding propositions (here, about the procedural requirements for a sanctions award), that’s a “red flag” about hallucination.

For whatever reason, the LLM has keyed on some combination of words in that opinion and is rearranging them in an attempt to provide a helpful response to the question that it has been asked. If an LLM’s response to a query seems “too good to be true” —that a case or two are unusually helpful or providing a “quote” that is amazingly on point—it is probably, in fact, too good to be true.

As the opinion reminds us, counsel should cite authority accurately at all times. But that doesn’t mean saving everything to the end. If something

produced by generative AI just looks wrong, immediate attention is required to keep a solvable problem from growing out of control.

Admit the Obvious.

The court said, “Had Hersh accepted responsibility and been more forthcoming, it is likely that the court would have imposed lesser sanctions. However, when confronted with a serious ethical misstep, Hersh misled, evaded, and violated her duties as an officer of the court.”

Mistakes happen. Generative AI is a constantly evolving technology, and lawyers operate under great time pressure. Unfortunately, this is not the only case in which a lawyer has prevaricated after an obvious technological mistake, and courts become very frustrated very quickly when they receive evasive answers to straightforward questions. By all means, try to avoid this kind of problem in the first instance. But if you learn that you have made a mistake, own up to it and do not add insult to injury.

Generative AI is an extraordinarily powerful tool that can produce massive client benefits. But like any other powerful tool, it can become destructive when misdirected. *Fletcher* is a strong reminder about the importance of using this technology correctly.

Six Keys to Legal Writing

From the 600Camp blog's "Legal Writing" page, October 2026

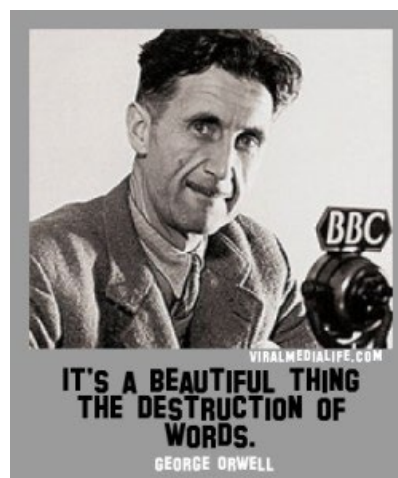
I often edit legal writing, especially initial drafts prepared by associate attorneys, and this page condenses the main points that guide my writing and editing. I hope you find them useful in your work. I owe a great debt to [Strunk & White](#) and several of these items derive from their wonderful book, "The Elements of Style." Another outstanding book about the writing process is Verlyn Klinkenborg's "[Several Short Sentences About Writing](#)," and Judge John Minor Wisdom's short essay "[Wisdom's Idiosyncrasies](#)," 109 Yale L.J. 1273 (1999), is a classic.



The following are my six main tips for quality legal writing.

1. Avoid needless words.

Strunk & White: "Vigorous writing is concise. A sentence should contain no unnecessary words, a paragraph no unnecessary sentences, for the same reason that a drawing should have no unnecessary lines and a machine no unnecessary parts. This requires not that the writer make all his sentences short, or that he avoid all detail and treat his subjects only in outline, but that he make every word tell."



2. Use shorter words.

3. Use shorter sentences.

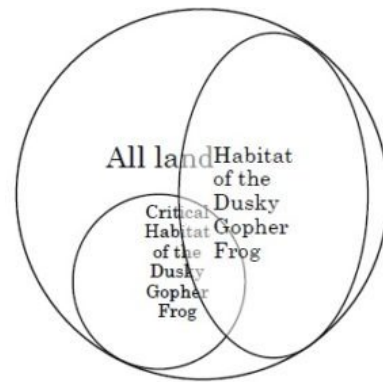
Klinkenborg: "A crowded sentence . . . betrays the writer's lassitude, [t]he lazy shuffling of words together into a single sentence [i]nstead of deciding

what really matters [a]nd finding the verbal energy to construct separate sentences.”

A letter I once wrote about [deposition dates](#) illustrates the power of brevity. In a more serious vein, an [excellent 2019 analysis](#) of Robert Mueller’s writing by Thomas Dean notes: “A plain style can have political implications.”

The Voice of America has a broadcast in [Basic English](#)—a simple vocabulary of around 1,500 words. It’s remarkable how much information gets conveyed. Worth a visit.

And the old adage that “a picture is worth a thousand words” still has great power; a 2017 Fifth Circuit opinion effectively uses a [pair of Venn diagrams](#) to simplify a complicated issue about the Endangered Species Act.



Having said that, brief does not mean dull. A young Winston Churchill offers five useful rhetorical tools in his 1897 essay, [“The Scaffolding of Rhetoric”](#)—tools that echoed in his World War II speeches, especially his [“Never Surrender”](#) address to the House of Commons. And while the playful tone of The Onion’s 2022 Supreme Court [amicus brief](#) is not for all occasions, the writing sparkles and every sentence is a well-balanced part of the entire product.

4. Avoid passive voice.

An extreme position about passive voice appears in the concept of [E-Prime](#). I don’t endorse its use, but E-Prime does provide valuable lessons to writers unable to shake excessive use of the verb “be.”



In the same spirit, Rebecca Johnson’s [“\[verb\] by zombies”](#) test is a great way to smoke out passive voice.

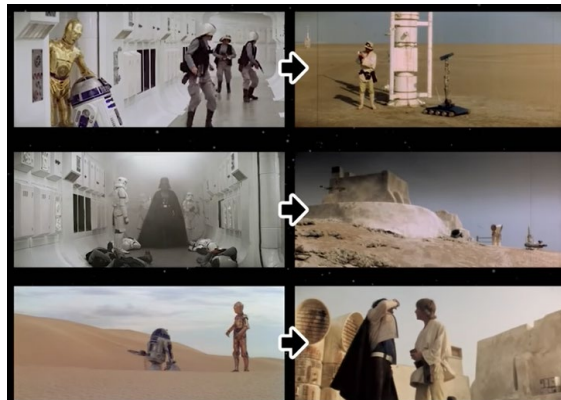
My [passive voice brief](#) highlights the practical problem of a return of service that did not clearly identify the process server (the matter settled before the First Court of Appeals in Houston ruled). The Dallas Court of Appeals

addresses a similar issue in [U.S. Bank v. Pinkerton Consulting](#), agreeing with the basic position in my brief.

5. There is no good writing. Only good re-writing.

It's not clear who said this—Internet sources generally identify Louis Brandeis, but without citation. But the statement is spot-on, especially in the age of advanced word processing. You have the technical ability to constantly revise all aspects of written work until completion, and should take full advantage of that opportunity, even if you do no more than take a free minute to change a word or two. (Or in the case of blogging, one never really completes . . .) And if you are fortunate enough to have a friend who is a gifted line editor, as described in this wonderful [2019 article in Literary Hub](#), by all means keep that friend happy and ask for his or her feedback!

By no means are writers the only creators who must edit and revise—this [excellent video](#) explains how the post-production editors of Star Wars salvaged a hit movie from the initial, bloated and hard-to-follow rough version.

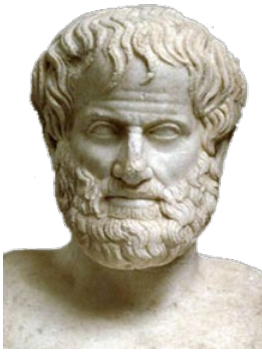


6. Look good.

A surprisingly active community writes about typography as applied to legal briefs; the Seventh Circuit's statement of [“Requirements and Suggestions”](#) is a good summary of key points. Personally, I have preferred (a) [Palatino](#) Linotype (the official font of the Seventh Circuit's opinions) as a font, (b) one space after a period, believing that it [looks better](#) with modern proportionally-spaced fonts than two spaces, and (c) using [“citational footnotes,”](#) although I understand and appreciate the arguments against them and often will not use them if it feels distracting for a particular brief or motion.

Reasonable minds can differ about all of those preferences (except, perhaps, as to the [“Comic Sans” font](#)). My point is simply that, especially for a reader pressed for time, good writing should also look professional and be easy on the reader's eyes.

THEORY:



Good writing, like all good communication, balances three factors: (1) the personal credibility of the author; (2) the logical and analytical appeal of the subject; and (3) the emotional appeal of the subject. Aristotle called these points “ethos, logos, and pathos.”

Several years ago I wrote an article about how these principles apply to the highly technical issue of selecting appropriate [citations to legal authority](#). While somewhat dry, the article shows the pervasiveness and importance of these principles in every aspect of written communication. By far, the best general work I have read on advocacy generally is [Trying Cases to Win](#) by Herbert Stern, which is based on the practical application of Aristotle’s principles in the courtroom.

On the more practical side, two short and useful references about common flaws in argument structure (“logos,” in Aristotle’s terminology) are [“An Illustrated Book of Bad Arguments”](#) by Ali Almossawi, and Darrell Huff’s 1954 classic, [“How to Lie With Statistics.”](#)

Why You Should Write Legal Briefs Like Car Manuals

Bar Association of the Fifth Federal Circuit • March 14, 2025

A good appellate brief is like a good user's manual for a car. Both are reference works with technical information for busy readers. Based on that similarity, this article offers two brief-writing insights from the author's manual for his 2014 Ford F-150 pickup.

1. Cross-references

While a chapter of a manual is generally a stand-alone discussion of a single topic, it's still related to the rest of the work. All chapters, after all, describe the same vehicle.

For example, a driver turns to “Adjusting the Steering Wheel” (right) because of a problem reaching the wheel.

The author of the manual knew that the driver's problem may have two causes. The wheel may be in the wrong place (the topic of this chapter), or the driver may be in the wrong place (the topic of another chapter).

Rather than repeat another section of the manual about “Sitting in the Correct Position,” the manual instead refers the reader to that section as an additional resource. That way, the information is made available, but the presentation in each chapter stays focused, while avoiding unnecessary repetition.

ADJUSTING THE STEERING WHEEL

WARNING



Do not adjust the steering wheel when your vehicle is moving.

Note: Make sure that you are sitting in the correct position. See **Sitting in the Correct Position** (page 114).



E95178

1. Unlock the steering column.

Note: The telescopic adjustment is an optional feature.

2. Adjust the steering wheel to the desired position.

So too with a good brief. If an opponent repeats an argument that's addressed earlier in your brief, there's no reason to repeat your refutation. Just tell the reader where that refutation can be found, as shown in the example below from a brief I filed a few years ago.

Telle concludes this section by repeating her earlier argument about the injunction potentially reaching customers with whom she did not work.⁹⁹ That argument is addressed in *supra* Part A, and Telle's return to it here raises no new points. The appropriate protection of Capital Title's confidential information justifies both the noncompetition restriction and this part of the injunction.

The same is true for background facts. In another short article that I wrote for the BAFFC, I advocate trying to integrate fact statements with the related argument wherever possible. But what if the same core set of facts relates to more than one legal issue?

Here again, the F-150 manual provides wise counsel. Simply refer to the earlier statement of those key facts, rather than repeating them again. By doing so, you not only avoid repetition, but minimize the risk of an inadvertent citation error creeping into the restated facts.

2. Table of contents

A car owner uses the table of contents to quickly find instructions on a specific issue, such as how to turn off the windshield wipers. The table of contents provides a "manual for the manual." It helps the owner, who has no desire to read the manual from start to finish, to find the specific issue about which he has a question.

Similarly, the table of contents helps judges and clerks quickly find the specific arguments or facts they need to review. Like the car owner, they aren't interested in a cover-to-cover read, when they just want to know why the appellant says the contract lacks consideration. A user-friendly table of contents lets them jump to the sections that relate to their questions.

Let’s look at a couple of examples. Below is what the F-150 manual’s table of contents says about “seats.” It’s clearly written to align with the way a car owner is likely to ask a question (i.e., “my seat is too hot” leads easily to “Heated Seats.”)

Seats

Sitting in the Correct Position.....	114
Head Restraints.....	114
Manual Seats.....	116
Power Seats.....	117
Memory Function.....	118
Rear Seats.....	119
Heated Seats.....	120
Ventilated Seats.....	121
Front Seat Armrest.....	122
Rear Seat Armrest.....	123

And below is what a recent brief has to say about a preemption issue. While some readers might be interested in reading a lengthy discussion of preemption from beginning to end, I thought it more likely that a typical reader would be curious about either procedure (the “standard of review” issue discussed under subheading “A”), or substance (analysis of the factual record under that standard of review).

II.	Even if the RLA applied, it would not preempt SWAPA’s claims, because they do not require interpretation of any CBA.....	47
A.	Correctly defined, the standard of review involves the interaction of state procedural law with federal substantive law.	48
B.	Under the correctly defined standard, Boeing did not conclusively establish its preemption defense.....	50

There’s a key difference, of course, in the two tables of contents. The table of contents in a brief is an outline of one overall argument, while a manual is never read from front to back. That said, a brief isn’t often read from start

to finish either. A reader is more likely to be interested in one specific point, and a table of contents that makes it easy to find that point has a lot in common with a good car manual.

An appellate brief and an automobile user's manual both rely on helpful cross-references and clear tables of contents. Those tools help guide a reader to the right information quickly.

No Lax Facts: Effective Presentation of Facts in Appellate Briefs

Bar Association of the Fifth Federal Circuit • July 31, 2023

When writing an appeal brief, the rules say to have a statement of facts, and a separate section of legal argument. In this article, I suggest that those required sections should not be treated as straitjackets that interfere with effective, readable presentation of the material facts about the case.

Specifically, I suggest that for many appeal briefs, it may be most useful to present facts in two places:

1. In the “statement of facts” at the start of the brief, provide a high-level summary of the parties and their relationships, followed by the procedural history of the dispute. Offer the court a guide to the main events, people and companies involved, what happened at trial, and the judgment or order being appealed.
2. Then, in the “argument section,” the brief presents the key facts about specific legal matters in those parts of the argument section. I suggest this as an alternative to either “blocking and copying” part of a long, initial fact statement into that argument section, or using a “see supra” signal to refer back to and incorporate part of such a fact statement.

This approach should make it easier for the court to see the link between facts and argument. It cuts down on flipping back to the initial statement of facts, which can disrupt reading and thus weaken the overall presentation of the argument. It also makes sure that vital facts are linked directly with the argument they support. This way, they are less likely to be overlooked or forgotten in a bigger fact summary. It also avoids inadvertent error caused by discrepancies creeping into fact discussions that are supposed to be identical.

Consider a medical-malpractice case. In a “traditional” or “strict” approach to the rules, the statement of facts might detail a complex medical procedure, the treatment chronology, and the alleged acts of negligence. The argument section then frequently refers back to these details.

In my alternative, the statement of facts would provide a brief overview: the plaintiff underwent a medical procedure, experienced adverse effects, and claims malpractice. Then, in the argument section, each key fact is introduced at the pertinent point in the legal analysis. For instance, while arguing about the doctor’s failure to meet the standard of care, specific facts about the doctor’s actions during the procedure are presented, simultaneous with the brief’s presentation of the legal authority about those actions. This immediate link between facts and argument makes it easier for the reader to follow the logic.

As another example, consider an intellectual property dispute about widget-making.

The “traditional” approach might include a detailed history of both sides’ widget-product development, launch dates, and alleged similarities. These details are then repeated or referred to in the argument section.

In my approach, the statement of facts would briefly outline the dispute: identify who the companies are, how they launched similar products, and the nature of the claims made. Then in the argument section, when arguing about the defendant’s access to the plaintiff’s design, specific facts about prior partnerships or shared employees would be introduced then. Similarly, when arguing about the products’ similarities, detailed comparisons, perhaps including charts or diagrams, are presented along with the controlling law. Here again, relevant facts tie directly to each argument in succession, making the narrative more persuasive and avoiding boring—and confusing—redundancy.

In both of these examples, my proposed approach helps establish a clear and persuasive narrative that aligns the key facts with the corresponding arguments, thereby making the overall brief more readable—and thus, effective.

To do this effectively, the author needs a keen sense of the relevant—the difference between details that are critical to specific arguments, on the one hand, and general facts about the parties and the dispute. In other words, the author has to know the arguments and the case to be able to effectively pick out key information based on how directly it relates to the argument. (This avoids the occasionally seen problem of a fact section written by one lawyer, and an argument by another, where the two parts of the brief just don't line up even though each is, individually, of high quality.)

Effective presentation of the key facts can make a brief easier to understand and more focused on the key issues—and thus more effective. By considering how to give a succinct overview in the initial fact statement and then bringing in further, detailed facts as part of the argument section, a stronger overall presentation may be possible in many cases.

Get the Last Word in an Effective Reply Brief

Bar Association of the Fifth Federal Circuit • December 28, 2023
Co-Authored with Campbell Sode

A reply brief gives the appellant a chance to get the “last word.” This short article offers four tips to do so effectively: (1) start drafting the reply by reviewing your opening brief; (2) scan your opponent’s brief for any concessions, whether express or implied; (3) artfully use artificial intelligence (“AI”) to help experiment with potential arguments; and (4) use the introduction to your reply to clearly orient the panel to your key points and a potential pathway to a decision in your client’s favor.

1. Start with what you said.

You should start by re-reading your opening brief.

Most basically, that exercise will “refresh your recollection” about what you said, after the passage of several weeks has dulled your memory.

And more specifically, it will give you the necessary foundation to analyze your opponent’s arguments. With your arguments in mind, you can review your opponent’s points with full awareness of what may have been conceded or omitted. Simply picking up the other side’s brief and reacting to it risks overlooking important background and context.

Also, review of your earlier arguments helps you advance the main goal of a reply brief, which is to reply, not repeat. If you are fully aware of the points you developed in detail in your opening brief, you can plan your reply arguments to refer back to and incorporate them, rather than just restate and repeat.

2. Evaluate concessions and their strategic effect.

After re-reading your opening brief, in your initial review of the other side's brief, analyze whether your opponent conceded any important factual or legal points in making their arguments. You should keep all your arguments in mind as you study to make sure you do not miss any important concessions.

Then, once a concession or admission is identified, you should carefully consider its strategic impact. You won't get "style points" simply for showing that an argument was inadequately refuted. But you can significantly advance your client's case if you show how a concession impacts the material issues, and with them, the appropriate judgment that the court should enter.

3. Consider what AI has to say.

Obviously, generative AI as it exists today can't write an appeal brief. But it can help with the initial review of a long appeal brief. And it can do so for free, in a matter of minutes—if not seconds.

Some potential prompts could include (after uploading the relevant briefs as .pdf or .txt documents, and being mindful of issues about confidentiality):

- "Summarize the key points in this document"
- "Compare these two legal briefs. What points in the appellant's opening brief does the appellee's brief fail to address?"
- "Compare these two documents and identify promising points for the appellant's reply brief."
- "Assume you are a judge for this case. What questions do you have after reading and comparing these two documents?"

It's your job as counsel to turn any insights from AI's responses to these prompts into legal argument. And while the answers may be useless in one case, the additional insight they provide in another would easily be cost-

beneficial, given how easy it is to pose this sort of question to generative AI programs.

AI can also be a helpful assistive tool after you re-read your first brief and review opposing counsel's brief for concessions. For example, AI can engage with your thought experiments about potential reply brief arguments and help you identify strengths and weaknesses in those arguments. AI can also identify patterns in opposing counsel's brief and help you anticipate what the other side may say during oral argument. Again, of course, you must be mindful that generative AI is just a useful tool like Westlaw or a legal pad. It cannot replace your own professional analysis of the issues, research, or writing.

4. Provide a clear introduction that guides the court to decision.

A final preliminary measure in preparing a good reply brief is to step back from the “back and forth” and think about a good introduction.

A good goal is to synthesize an introduction that re-orientes the appellate panel to your primary arguments—as set out in your first brief—and walks the judges or justices through your responses to opposing counsel. By putting all the key arguments on the table, in context, you can work to lay out a clear path that the court can follow to a favorable decision on the merits.

It's easy to forget this part of the reply, particularly if the merits briefing is detailed and hotly disputed. But just a couple of pages that “rise above the fray” to help the judges do their job will be appreciated, and it's wise to start planning those pages from the outset.

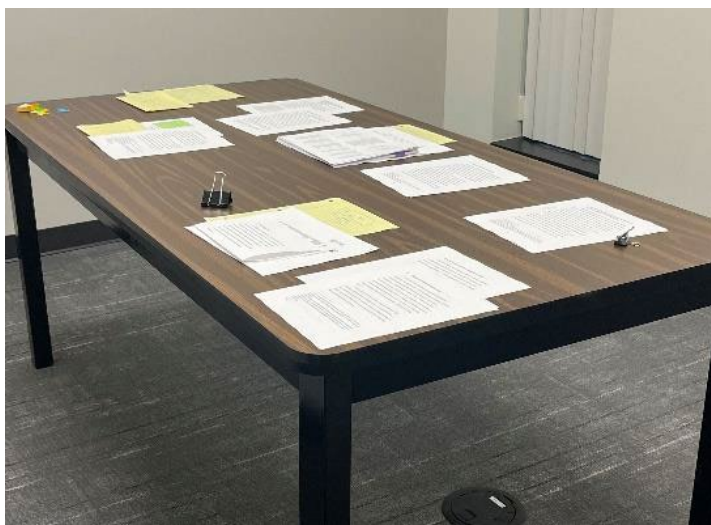
A good reply brief is formed by a strong foundation from your first brief, strategic use of concessions by opposing counsel, appreciating the potential for fresh ideas from generative AI, and a clear introduction that guides the court through your key points. Not every appeal necessarily involves all four of these considerations. But considering how they apply in every case can only help make your briefs clearer and more persuasive.

Preparing for Oral Argument

Bar Association of the Fifth Federal Circuit • October 28, 2022

When preparing for an oral argument, I have two “end goals”: (1) clear and concise substance—both for key points that I want to make, and for key answers I anticipate making to likely questions from the bench—and (2) flexibility: the ability to pivot based on judges’ questions, and reorganize the rest of my argument time towards what seems to be of most interest to the panel.

To move myself towards those goals, about a month before argument, I start preparing by printing out my client’s brief (or briefs, if appellant) and then lay the pages in stacks on a worktable in the conference room by my office, by major topic.



Preparation underway for an argument about three weeks away.

Why, in our electronic era, would I make piles of paper? Because that’s what I’m going to have at the courthouse—a stack of hard copy notes and other materials. I like the idea of starting with something that physically resembles the end product.

Stacks also help with developing flexibility because I can move them around to test out different orders of argument. As the appellee, I want to be able to adjust the order of my arguments to match what the judges are interested in. And as appellant, I have the ability to (at least at the start) set the agenda by stating the first topic. By moving the stacks around, I can try different orders and how they flow and sound.

I try to stop by that table daily to make notes on the stacks. I might add a printout of a key case, or a piece of paper with a possible question or way of phrasing a key point.

After that process has been going for a while, then I'll add the corresponding parts of the other side's briefs to my stacks. A couple of weeks later, I can take a stack back into my office and type out a more organized set of notes about that topic.

And lest you think I am a total pack rat, if I see that I have unnecessary material in a stack, then I throw it away. "Decluttering" keeps my material organized and gives me a sign that my argument is developing in a more concise direction.

As my notes come together I can start practicing the actual presentation. I try to do that both by talking to myself (in private, to not disturb my law partners or family members), and to an audience (usually, colleagues with varying degrees of knowledge about the case). By talking to yourself, you can hone the precise wording of your points. But only practicing with others gives you critical outside perspective. I find that I can get so caught up in my own view of an issue that I forget how it may look to others—and at the end of the day, the argument is for the benefit of "others" (the judges), not me!

Bring Your Laptop and Prepare Your Laptop

Bar Association of the Fifth Federal Circuit • March 14, 2025

You've prepared for oral argument. You've rehearsed the key points and tried to plan for the toughest questions. But no matter how well you prepare, a judge can always throw you a curveball about something that's not in your prepared talking points—asking about a footnote in the opposing brief, for example, a key exhibit deep in the record, or a quotation you paraphrased in passing but didn't memorize verbatim.

That's where your laptop comes in (or for those who prefer other technology, your tablet).

A recent argument of mine shows why you need your computer at the ready. I had just stood up to start my arguments for the appellant. Before I said a word, the presiding judge asked: "Mr. Coale, on page 35 of the appellee's brief, they make four points about the anti-assignment provision. Can you respond to those?"

I had some general notes about that issue in my hand, but of course had no clue what was on page 35 of the appellee's brief. "Just a minute, let me get that," I said, reaching back to grab my laptop, while the judge politely reminded me: "Page 35."

Fortunately, I had the other side's brief open in a PDF reader, and was able to click to page 35 almost immediately once I had my laptop in hand. And fortunately (after an initial anxious moment), I recognized the four arguments, and was able to answer with a reasonable amount of precision. The judge nodded, and eventually decided the case based on those contract provisions.

That moment shows why bringing a laptop to oral argument—and staging it close at hand, with key documents open and ready—should be a best practice. Having your laptop at the ready in oral argument isn't just about

convenience; it's about control. The more seamlessly you can access and reference the briefs, record, and exhibits, the more confident and credible you appear.

Here's how to make it work:

1. Load your key documents before the argument.

Before you step up to the podium, open the PDFs of the main filings in separate tabs:

- Your brief
- The opposing brief
- The reply brief (if applicable)
- The record excerpts or key exhibits (in Texas state practice, a key volume of the clerk's record for example)
- Any particularly relevant case or statute

And in addition to the tabs to rapidly move among documents, you can use bookmarks and highlights to jump quickly to important sections within a particular document.

2. Know where to find your key points.

Even if you're familiar with the case, navigation is crucial. If a judge asks about an argument buried on page 42 of the opposing brief, you don't want to spend 30 seconds scrolling while everyone watches. Before the argument, take a few minutes to just review what major topics are addressed where, so the overall "look and feel" of the materials can help guide you in a fast-paced search for something specific. Being in a familiar "landscape" when you search will naturally make you more effective.

3. Be ready to show, not just tell.

Sometimes, pulling up the exact language makes all the difference, even if you aren't directly responding to a question. If a judge challenges your

characterization of an argument, being able to quickly read it verbatim can clarify matters and defuse skepticism. If there's a factual dispute, showing the court the precise record page can make your position more persuasive.

Using a laptop at oral argument isn't a crutch—it's a tactical advantage. It allows you to respond faster, engage with the court more effectively, and demonstrate mastery of your case. The days of flipping through a paper binder or relying solely on memory are over. A well-prepared digital setup ensures that when the unexpected happens, you've got an answer just one click away.

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Widely recognized as one of the top appellate lawyers in Texas, David Coale's diverse experience ranges from sophisticated constitutional issues in the United States Supreme Court to defense of a payphone operator before a Tarrant County Justice of the Peace. He is among the few lawyers to have handled a matter in all fifteen of the Texas intermediate courts of appeal, and is the only known Texas appellate lawyer who has been fictionalized in a romance-novel series as the lawyer for an outlaw motorcycle gang.