

North Carolina Appellate Advocacy Training
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WRITING THE STATEMENT OF FACTS

A FEW WRITING SAMPLES

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HOW NOT TO START YOUR STATEMENT OF FACTS

On March 28, 2006, Dave Bell was arrested and charged with First Degree Statutory Sexual Offense, a Class B1 felony, for allegedly molesting his seven year old daughter, Jessica Bell. On April, 27, 2006, a grand jury returned an indictment, charging Dave Bell with the same offense.

Trial commenced on April 10, 2007. The State's first witness, Ann Lemon, was Jessica's first grade teacher. She testified that in September, 2005, she noticed a serious change in Jessica's behavior and mood. Prior to then, Jessica had been a happy, peaceful child. Ms. Lemon testified that when the school year started in September, 2005, Jessica for the first time seemed sad and depressed. She threw tantrums and started fights with other children. . . .

The State's second witness was Aimee Towne, Jessica's mother. Ms. Towne testified that on May 13, 2006, she and Jessica were having dinner at her parents' home. . . .

**AND NOW FOR A BETTER (AND MORE INTERESTING)
WAY OF STARTING THE BRIEF**

Start telling the story in a way that creates a favorable impression of your client and of the case. You will get to the bad stuff eventually, but it is important to establish the favorable context in which you want the reader to view the negative parts of the case

Dave Bell graduated from County High School in June, 1993. He immediately enlisted in the Marines, and served for four years, being stationed in Europe, the Middle East, and the United States. In 1997, he received an honorable discharge, and moved back home to Raleigh.

Six months after coming home, Dave married Amiee Towne, who was 19 at the time. They soon had a daughter, Jessica. Dave, who had never been in trouble with the law, worked full time as a manager for McDonalds. Aimee refused to get a job, and stayed home, drinking sherry and eating bonbons. Dave had primary responsibility for Jessica, taking her to school every day, preparing her lunch in the morning, and cooking her dinner when he came home from work in the evening.

In July 1995, Dave filed for divorce, asserting that Aimee had numerous sexual affairs with other men. The court granted Dave's petition and gave Dave custody of Jessica.

Introduce the crime by starting with the aspects of it that are most favorable to your theory of defense on appeal

Less than two months after Dave was granted a divorce and given custody of Jessica, Dave's ex-wife violated the custody order by appearing at Jessica's school and demanding to speak with her. Teachers saw Aimee talking to Jessica for about a half hour, but could not hear what they were saying. The next day, Jessica, for the very first time, told her play therapist that Dave had touched her inappropriately. Explaining what she claimed happened, seven year old Jessica said, "He must have been dreaming about his girlfriend."

It is possible to tell the story from the perspective of different characters, and to start telling the story at a completely different point in the narrative, if doing so will advance your appellate theory of defense.

Meg Bowles felt trapped. Two years earlier, she lied on her resume to get a job as a play therapist at County Mental Health Center. She was sure she could do the job well, but had flunked out of the play therapist certification program in her first graduate semester at N.C. State. With a little creative resume writing, she changed the failure into a non-existent master's degree, and landed the job. But now the lie came back to haunt her. She was hired as the State's expert witness, to testify about her treatment of Jessica Bell. The prosecutor submitted her resume to the court with its response papers to the defense Daubert motion. And then the thing she dreaded came to pass – the State subpoenaed her as a trial witness.

Knowing that she could not lie on the stand, Ms. Bowles did what she thought was the right thing – she met with the prosecutor and came clean. She told the prosecutor about her phony resume, and asked what she should do.

The prosecutor could have done the right thing and told Ms. Bowles to take the stand and admit to the falsehood. Instead, the prosecutor told her to try to cover it up.

The same story can be told from the prosecutor's perspective.

Just before trial, the prosecution case sprung a leak. In a trial that would hinge in large part on expert testimony, the State's only expert, play therapist Meg Bowles, confessed to the prosecutor that she had lied about her credentials. Rather than having a master's degree in play therapy from N.C. State, Ms. Bowles had flunked out of the program in her first semester. She then created a fake resume to get her job as a therapist at County Mental Health.

The prosecutor could have done the right thing and told Ms. Bowles to take the stand and admit to the falsehood. Instead, the prosecutor told her to try to cover it up.

The prosecutor could have done the right thing and immediately notified defense counsel and the trial judge about Ms. Bowles lies. Instead, the prosecutor kept silent.

A chart is a very effective way of showing the reader how a key witness's testimony changed over the course of the case.

The following chart illustrates the way Jessica's story changed from her first statements, when she repeatedly denied any sexual touching, to her statement to Ms. Bowles, where she insisted that everyone was fully clothed and she awoke to find herself on top of her father, through her statement to the police, where she said she was undressed and on top of him, and finally to the trial when she insisted that she was awake for the entire time, that both of them were naked, and that her father was on top of her:

<u>At Several Meetings With Meg Bowles</u>	<u>Final Meeting With Meg Bowles</u>	<u>For the First Hour With the Police</u>	<u>After Extended Questioning By the Police</u>	<u>At Trial</u>
There was no sexual contact	She was asleep	There was no sexual contact	She was asleep	She was awake
	She was on top		She was on top	He was on top
	Both fully clothed		Her pants were off. He was fully clothed	They both were undressed
	Touching with his hand		Touching with his hand	Touching with his hand and penis
	No mention of touching with his genitals		No mention of touching with his genitals	Touching with his genitals