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Brief Writing Points from the Prosecution Perspective

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BRIEF WRITING POINTS FROM THE PROSECUTION PERSPECTIVE

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I. The Basics

- A. Know the rules. Be familiar not only with the Rules of Appellate Procedure, but the applicable local rules and the Standards of Appellate Conduct.
- B. Know the rules of citation. You don't have to be a slave to the bluebook and green book, but be familiar with the general rules and consistently apply them.
- C. Know the rules of grammar and punctuation. Keep a grammar guide (or two) handy and use them. A good basic is the Texas Law Review's *Manual on Usage & Style*, but there are countless others.

II. Getting started

- A. Check the record as soon as the brief comes in to make sure the court has jurisdiction and that the record is complete. Supplement the record if parts are missing or have not been requested by the defense and you believe that you will need them.
- B. Find out where the original exhibits are located and ascertain how far ahead of time you will need to request inspection if it becomes necessary. If you wait to the last minute, you may not have time to look at the originals before your brief is due.

C. Carefully read the appellant's brief. Do preliminary research on the legal issues the appellant has raised -- enough to be familiar with what the record should or should not reflect in order for the conviction to be affirmed or reversed.

D. After completing your preliminary research, review the entire record. You can skim or even skip the voir dire, unless a voir dire point has been raised or it becomes necessary for other reasons, but read everything else closely. Keep an eye out for events that rebut the appellant's premise or factual statements, not just events occurring at the portions of the record cited in the appellant's brief. For example, if the appellant has complained about the admission of evidence, watch for the admission of similar evidence at other times in the trial; if he has complained about closing argument, pay close attention to the defense closing to see if the comment was a response to the defense.

E. No need to formally outline your response, but you should have at least a broad idea of how you intend to reply, point by point, by the time you begin drafting the brief.

III. Organization

A. You need not follow the appellant's organization of issues – if you think addressing a later point of error first makes the entire brief easier to understand, then re-organize it (often the case with sufficiency points). Just be sure you make it clear to the court what you're doing and why. Similarly, if you think combining several of the appellant's points into one reply point will make the issues easier to understand, then combine – the point is not to make it more concise (that's a bonus), but to make it as clear as possible to the court what the issues are and how they should be resolved. Conversely, if you think separating out issues within an Appellant's single point of error will increase clarity, then separate them.

B. Begin your response to each point of error by very briefly setting out the appellant's contention in a short paragraph. Ideally it should be no more than a few sentences. Be as accurate as possible, quoting when you can, and always cite to the page of the appellant's brief where the argument will be found. Do not be

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