

Effective Appellate Advocacy: Issue Framing

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In my inbox this morning was a great [blog post](#) by [Kendall Gray](#), writing about the Supreme Court's decision this week in [J. McIntyre Machinery v. Nicastro](#). He pointed out two wonderful examples of issue framing by Justice Kennedy, writing for the majority, and Justice Ginsberg, writing for the dissent.

See the magic for yourself, after the jump.

Nicastro concerned "stream of commerce" jurisdiction under [Asahi Metal Industry Co. v. Superior Court](#). Depending on whether you are Justice Kennedy or Justice Ginsberg, either "the plaintiff seriously injured his hand while using a metal-shearing machine" manufactured by the defendant (Kennedy), or the defendant's "three-ton metal shearing machine severed four fingers on Robert Nicastro's right hand" (Ginsberg). Nicastro, understandably piqued, sued J. McIntyre Machinery in New Jersey. One problem: J. McIntyre is an English company that sells its products through a U.S. distributor, raising the question of whether it had sufficient minimum contacts to be subject to suit in New Jersey.

Justice Kennedy framed the issue thusly:

"[Whether a] British manufacturer of scrap metal machines was subject to jurisdiction in New Jersey, even though at no time had it advertised in, sent goods to, or in any relevant sense targeted the State."

Justice Ginsberg put it a bit differently:

"A foreign industrialist seeks to develop a market in the United States for machines it manufactures. It hopes to derive substantial revenue from sales it makes to United States purchasers. Where in the United States buyers reside does not matter to this manufacturer. Its goal is simply to sell as much as it can, wherever it can. It excludes no region or State from the market it wishes to reach. But, all things considered, it prefers to avoid products liability litigation in the United States. To that end, it engages a U. S. distributor to ship its machines state-side. Has it succeeded in escaping personal jurisdiction in a State where one of its products is sold and causes injury or even death to a local user?"

Nicely done, on both sides.

The two opinions also call to mind a long-running debate about issue framing in appellate briefs: Must an issue statement be limited to one sentence (Kennedy) or is it okay to use a more narrative, multi-sentence issue? I personally lean toward the latter, though in my wildest dreams I cannot imagine an eight-sentence issue statement (Ginsberg). On the other hand, Justice Ginsberg's framing would make a fabulous introduction to a brief, or would work well in a summary of argument.