

FINDINGS OF FACT: CRITICAL, UNDERUSED ADVOCACY TOOL

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IT TAKES A VILLAGE THANKS TO



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STANDARDS OF REVIEW



3

STANDARDS OF REVIEW: POTENTIAL ROLE IN CRAFTING PROPOSED FINDINGS

Can be a game changer
– when advocate uses
strategically, depending
on specific case

Differing standards are
function of discrete
institutional roles
between trial and
appellate courts



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STRATEGY

- Reframe
- Recast
- Move left or right on the sliding scale to a more favorable standard for your case theory

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No	Moderate	Great
De Novo	Abuse of Discretion	Clearly Erroneous
Questions of Law	Credibility	Questions of Fact

DEFERENCE CONTINUUM



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Title search: Finding of Fact: Critical, Underused Advocacy Tool

Also available as part of the eCourse

[Practical Guidance in Criminal Appeals Practice \(2024\): PDRs, Statutory Interpretation, Findings of Fact, and Judicial Perspectives](#)

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