

# Writing Opinions in Today's World: Being Understood Without Resorting to Emojis

Hon. Judge Samuel A. Thumma  
Arizona Court of Appeals, Division

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Council of Chief Judges of the State Courts of Appeal  
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# Good Writing

“‘This thing happened and then this thing and then this thing.’ And this is what it means.”

Ira Glass according to Judge Karen Hunt (Alaska, retired) or Professor Elizabeth Francis (University of Nevada, Reno), National Judicial College Writing program, Summer 2012



# Good Writing

- At some level, is through the eyes of the reader.
- Is many things, to many people, in many contexts.
  - Text you like, but your friends may not.
  - Text critics like, but you may not.
  - Newspapers, blogs, posts, etc., that appeal, or don't appeal, to you and others.
- At the core, it tells a story.



# Good Writing

- Does a bunch of other things, depending upon context.
- Legal writing is one such context.
- Legal writing is hard:
  - has technical requirements;
  - uses terms of art;
  - uses different dialects or codes;
  - requires jurisdictional things, etc.



# What is the Opposite of Good Writing?

- Also in the eye of the reader.
- I have no corner on the market on good writing or not so good writing.
- I think I can tell a story but I know am not a gifted writer.
- I am a student of writing and work hard (and struggle) every day to improve my writing.
- With the preface, let's turn to two perspectives on not so good writing.



# What is the Opposite of Good Writing?

- Two perspectives through my (Sam's) eyes:
  - Sacred Cows – things we see a lot, but may not think about a lot.
  - Pet Peeves – things that cause us (me?) to stumble.
- Happy to have you view things differently or disagree completely.
- Goal is to have you think (again) about these examples.



# Sacred Cows

1. The “lower court.”
2. Personal pronouns.
3. Defined/defining terms.
4. Acronyms.
5. Legalese.
6. “We”
7. A recitation of the generic standard(s) of review.



## Sacred Cows (Part 2)

8. Long, complex sentences.
9. Footnotes that are a dumping ground for marginally relevant information.
10. Enormous block and indent quotes.
11. Adverbs.
12. “For the reasons set forth above, we affirm in part, vacate in part and remand in part for further proceedings consistent with this decision.”



# Pet Peeves

1. Clutter, particularly in dates and facts.
2. Irrelevant facts that don't add context.
3. Pointed personal criticism of attorneys or parties.
4. Pointed personal criticism of trial judges or concurrence/dissent/majority.
5. *See Johnson, supra.*
6. "We have jurisdiction." (without more)



# Pet Peeves (Part 2)

7. “We disagree.”
8. Word X means Y. See some random dictionary.
9. Humor (almost without exception, and for a bunch of reasons).
10. The surprise player or fact injected without introduction.



# Pet Peeves (Part 3)

11. Stretching dicta/the “quote hopper”/The Jack Brown Rule.
12. The selective court/jurisdiction picker.



# Quiz

- None of Plant's cases [are – *or* – is] controlling.
- But Page [only cites – *or* – cites only] one case.
- Consider the statute [that – *or* – , which] Jones cites.
- Bonham recovered his just [deserts – *or* – desserts].



# 3 Things to Consider

- Audience
- Ethics & Judicial Responsibility
  - Readability



# Audience

Who are they?

- The Parties
- Law People
- The Public

What do they want?

~~To be entertained!~~ To *understand*.



# Audience: Twitter Survey

- Thank you for your service!
- Use plain English—help parties/public understand
- Be clear
  - Use “We hold” to identify holdings
  - If remanding, clearly identify what must happen on remand (not just “consistent with this opinion”)
  - **Put conclusion/outcome in first paragraph**
- Don’t leave party/lawyer feeling ignored
  - Address every (substantive) argument/authority
- Don’t leave party/lawyer feeling disrespected
  - No “bench slaps” unless imposing sanctions (maybe impose more sanctions?)
  - Explain with sympathy; don’t argue or dismiss (“~~without merit~~”)
  - Avoid humor → “punching down” or “making light of”



# Ethics & Judicial Responsibility

Nina Varsava, “Professional Irresponsibility and Judicial Opinions,” *Houston L. Rev.* 59:1, 101 (2021)

- Writing for media attention, or to attract praise, or to “build reputation” is bad for the legal system
  - Imagine legislators trying to write “creative,” “witty,” “folksy,” “evocative,” “acerbic,” or “playful” statutes
- Purpose: Resolution, with Justification & Guidance



# Readability

- Shorter words, shorter sentences, shorter paragraphs (shorter opinions!)
- Fewer words (e.g., change “In light of the fact that” to “Because”)
- Use section headings (and numbering)
- Better typography



# General Typography Tips

- Use more white space
  - Use visuals
  - Use better fonts



# Use more white space

A no-evidence motion for summary judgment asserts that there is “no evidence of one or more essential elements of a [plaintiff’s] claim.” Tex. R. Civ. P. 166a(i). In contrast, a traditional motion for summary judgment asserts that, even if there is evidence of the elements of the plaintiff’s claim, the defendant is nevertheless “entitled to judgment as a matter of law.” Tex. R. Civ. P. 166a(c).

To support his premises-liability claims against Billingsley, Solis must prove that: (i) Billingsley had actual or constructive knowledge of a condition on the premises; (ii) the condition posed an unreasonable risk of harm; (iii) Billingsley failed to exercise reasonable care to reduce or eliminate this unreasonable risk of harm; and (iv) Billingsley’s failure to do so proximately caused Solis’s injury. *LMB, Ltd. v. Moreno*, 201 S.W.3d 686, 688 (Tex. 2006). Elements (i) and (ii) are about whether Billingsley had a duty to act; element (iii) is about whether Billingsley breached that duty and therefore acted negligently; and element (iv) is about whether this negligence caused Solis’s alleged injury. *See Western Investments, Inc. v. Urena*, 162 S.W.3d 547, 550 (Tex. 2005) (listing elements as duty, breach of duty, and an injury proximately caused by the breach).

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# Use visuals

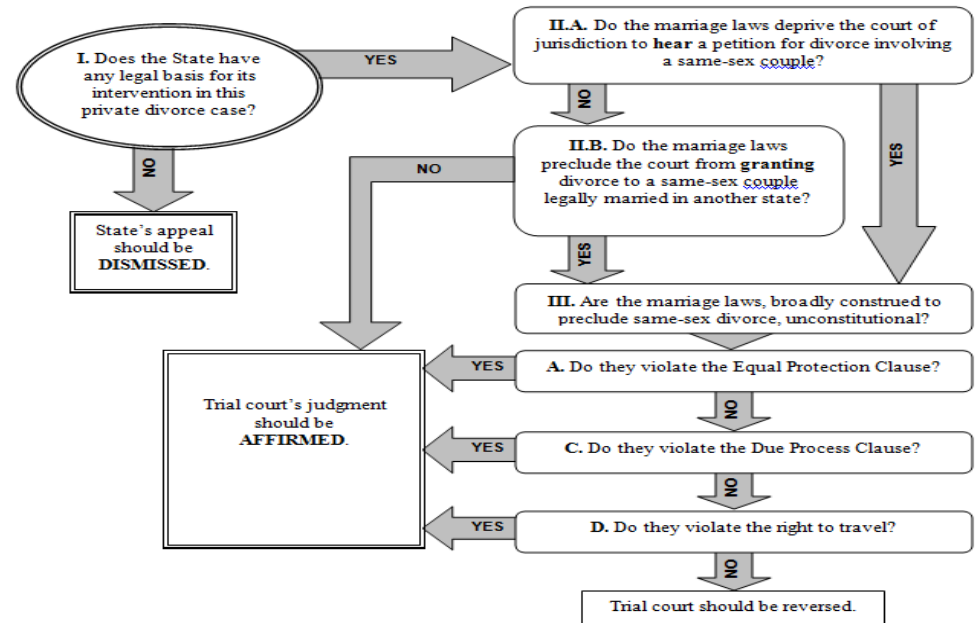
Before:



After:



Massachusetts. This question entwines numerous complicated procedural, jurisdictional, and constitutional issues. The following roadmap demonstrates the analysis:



# Use better fonts



# Questions/Discussion

