

PRESENTED AT

2022 Robert O. Dawson Conference on Criminal Appeals
May 25-27, 2022
Austin, Texas

Beyond Brief Writing

Breaking the mold of tedious, superficial briefing through strategic choices, charts and pictures, better issue-framing, and more.

Stacey M. Soule, State Prosecuting Attorney
Emily Johnson-Liu, Asst. State Prosecuting Attorney

Stacey M. Soule & Emily Johnson-Liu
Office of State Prosecuting Attorney
Austin, Texas

information@spa.texas.gov
512.463.1660

Table of Contents

1. Visual Aids	5
a. Courts Leading by Example with Visual Aids	5
b. Practitioners Are Using Visual Aids	8
i. Photos and Screenshots in Briefs	8
ii. Charts in Briefs	12
iii. Hyperlinks	15
c. Warnings about Visual Aids	17
i. The E-filing Rule	17
ii. Ethical Concerns	17
iii. Thinking Critically about Visuals	18
2. Making Strategic Choices	21
a. Statement of Facts	21
i. Begin with the Facts	21
ii. Myth Busting About Facts	22
iii. Fact Considerations	23
iv. Where to Brief Facts	24
b. Statutory Construction	25
c. Sufficiency	26
i. Be Strategic About What You Argue	26
ii. Be Strategic About How You Argue	27
d. Strategies for the Argument Section Generally	28
e. Keep it to the Record	29
f. Reducing Your Points for More Efficient Briefing	30
g. Use Headings Persuasively	31
3. Framing the Issue	32

a. Overview	32
b. Draft the Issue with the Twitter Limit in Mind	33
c. Revising the Issue Statement as You Go	34
d. The Deep Issue	36
4. Breaking the Mold: Things to Help You Grow.....	39
a. Mistakes	39
b. Hypotheses and Rabbit Trails	40
c. Criticism Improves Your Skills and Work-Product	40
d. Invent Words or Phrases	41
e. Freedom from Citations	41
f. Think in Terms of Systems and Consequences.....	44
g. Overcoming Bad Precedent	47
h. Legal It Up	48
5. Breaking the Mold: Things to Remember	49
6. Oral Argument	49
7. Conclusion	50

We viewed “Beyond Brief Writing” as an opportunity to delve into topics not typically discussed in other advanced legal writing presentations. Through the examples set out in this paper, we hope you’ll find ways to improve and enliven your brief writing. Conferences like these are a chance to step away from the routine of churning out briefs and to reflect. Without such moments to pause and gain perspective, we can trick ourselves into thinking that the grueling hours spent putting a brief together will be directly related, if not matched, by the court’s painstaking attention to our work product. Ha! No one has ever said that they wished they could keep reading a legal brief just a little bit longer. Far from it. William Zinsser in his classic nonfiction writing guide, “On Writing Well,” chides that “the reader is an impatient bird, perched on the thin edge of distraction or sleep.”¹

“All I want to do at the end of the day is cuddle up in bed and enjoy a good brief”

-SAID NO ONE, EVER.



There is no reason to think judges are different. After all, they have many more briefs to read after yours. According to the Office of Court Administration, in Fiscal Year 2020, there were 3,450 new writs, 1,043 new petitions for discretionary review (PDRs), and 618 new original proceedings filed in the Court of Criminal Appeals.² In the same period, the courts of appeals saw 3,631 new criminal case filings and 5,074 new civil ones.³ To put that in perspective, that’s about 8,500 new cases. If you assume a 12% dismissal rate off the top,⁴ that’s 7,500 cases getting briefing. If each advocate uses only half her word limit, that comes to 15,000 words of briefing total in the case. At the average reader’s rate of 250

¹ William Zinsser, “The Audience,” ON WRITING WELL 24 (30th ed. 2006).

² [FY20 Annual Statistical Report, Office of Court Administration, 42.](#)

³ *Id.* at 49.

⁴ 12% is a fair estimate. In Fiscal Year 2020, 23% of cases were dismissed, 12% at the opinion stage, suggesting roughly 11% were dismissed at an earlier stage. *Id.* at 50, 52. In the prior year, 24% of cases were dismissed, 9% at the opinion stage, leaving 15% dismissed earlier. [FY19 Annual Statistical Report, Office of Court Administration, 17-18.](#)

words a minute, that comes to 1 hour of reading per case, which is 7,500 hours a year or 312 days a year that the courts of appeals spend reading briefs. With this new perspective in mind, let's plunge in to how we can make the most of the precious few minutes that any of our briefs will get.

1. Visual Aids

Visual aids are a valuable tool for appellate courts and practitioners. They are magnetic when placed among the written word. Images, notably, have proven to be a particularly potent way to capture attention and persuade.⁵

Images are efficient, accessible, and memorable. Multimedia legal argument may assist courts, litigants, and scholars to convey complex scientific, technical, or abstract information. They also engage readers, particularly twenty-first-century readers, to whom legal writing is a vast black-and-white desert.⁶

With some creativity and not-so-new ingenuity, a variety of methods—images, screenshots, charts, and bullet points—can be employed to augment and facilitate your prose.

a. Courts Leading by Example with Visual Aids

Though Westlaw has been slow to adapt to include certain images,⁷ that has not stopped the Court of Criminal Appeals (CCA) from pressing forward. In *Milton v.*

⁵ Elizabeth G. Porter, *Taking Images Seriously*, 114 COLUM. L. REV. 1687, 1724 (2014) (“[L]awyers and judges are embedding images directly into legal documents, using those images to drive arguments and—through explicit argument and implicit messaging—to compel conclusions.”). Porter’s article provides a comprehensive history of images in the legal arena.

⁶ *Id.* at 1694 (2014).

⁷ On Westlaw certain visual material, particularly in pre-2019 sources, is marked with “TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE” within documents. Meanwhile, HeinOnline has adapted to this technology. *Id.* at 1781. The CCA recent use of hyperlinks in opinions have not been reproduced in Westlaw. *See, e.g., Pugh v. State*, No. PD-1053-19, 2022 WL 224275 (Tex. Crim. App. Jan. 26, 2022).

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Beyond Brief Writing

Also available as part of the eCourse

[2022 Robert O. Dawson eConference on Criminal Appeals](#)

First appeared as part of the conference materials for the 2022 Robert O. Dawson Conference on Criminal Appeals session "Beyond Brief Writing"