

**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.*

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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.”<sup>1</sup>

“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.<sup>2</sup> In the same period, the courts of appeals saw 3,631 new criminal case filings and 5,074 new civil ones.<sup>3</sup> To put that in perspective, that’s about 8,500 new cases. If you assume a 12% dismissal rate off the top,<sup>4</sup> 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

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

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

<sup>3</sup> *Id.* at 49.

<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup>

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,<sup>7</sup> that has not stopped the Court of Criminal Appeals (CCA) from pressing forward. In *Milton v.*

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<sup>5</sup> 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.

<sup>6</sup> *Id.* at 1694 (2014).

<sup>7</sup> 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).

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