

A Course in Legal Writing

Appeals for the Pro Bono Practitioner

Orlando, Florida

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“There are two things wrong with almost all legal writing. One is its style. The other is its content. That, I think, about covers the ground.”

Fred Rodell, *Goodbye to the Law Reviews*, 23 Va. L. Rev. 38 (1936).

Most legal writing
is so bad because
lawyers read so
much bad legal
writing

Petition for Certiorari

United States Supreme
Court

*Sigram Schindler
Beteiligungsgesellschaft
MBH v. Lee*

Question Presented

“Does the U.S. Constitution, in legal decisions based on 35 USC §§ 101/102/103/112

- Require instantly avoiding the inevitable legal errors in construing incomplete and vague classical claim constructions – – especially for ‘emerging technology claim(ed invention)s, ET CIs’ – – by

Construing for them the complete/
concise refined claim constructions of the
Supreme Court's
*KSR/ Bilski/ Mayo/ Myriad/
Biosig/ Alice* line of unanimous precedents
framework, or does the U.S. Constitution
for such decisions entitle any public
institution to refrain, for ET CIs, for a time
it feels feasible, from proceeding as these

Supreme Court precedents require –
– or meeting its requirements just
by some lip-service – – and in the
meantime to construe incomplete
classical claim constructions,
notwithstanding their implied legal
errors?”

Say What?

Make time to
Read Good
Writing

**Lincoln “chose
words with a
lawyer’s precision
and a poet’s sense
of rhythm.”**

Don't be Edward Everett

- His 13,000-word/two-hour speech preceded Lincoln's Gettysburg address
- Lincoln spoke in 272 words in two minutes
- Lincoln carefully prepared his speeches

E.B. White

“I am writing this in
a beach cottage on a
Florida Key.”

On a Florida Key February (1941)

I am writing this
essay while sitting
in a beach cottage
which is located on
a Florida Key.

I am writing this in
a cottage located on
a beach that is
situated on a
Florida Key.

I am writing this in a
beach cottage on a
Florida Key.

Rule 17 Strunk & White *The
Elements of Style*

Omit needless words!

Omit needless words!

Omit needless
words!

**Who are you
writing for?**

KNOW YOUR AUDIENCE

- Litigants
- Counsel
- Appellate Court/Body
- Posterity

Judges

Shorter is

ALWAYS

Better

No judge has ever said . . .

“The way judges rebel
at aimless verbose
writing is they simply
stop reading.”

Bryan Garner

Wall Street Journal, 3/13/2015

ROADMAP PARAGRAPH

Summary - - - - Gives Context
Written and Oral

Practice Tip: **WRITE LAST**

A woman of childbearing age was hired as a teacher at a small Christian school. Then she got pregnant, married, and fired. In that order. Then she filed a lawsuit. She lost on summary judgment. This is her appeal.

Hamilton v. Southland Christian Sch., Inc., 680 F.3d 1316, 1317 (11th Cir. 2012)

**5 RULES FOR
FINDINGS OR
STATEMENTS
OF FACT**

1. Be Aware of Legal Requirements

§ 61.08(1) Alimony

“In all dissolution actions, the court shall include findings of fact relative to the factors enumerated in subsection (2) supporting an award or denial of alimony.”

Fla. R. Civ. P. 1.610(c)

“Every injunction shall specify the reasons for entry . . .

Attorney’s Fees?

**2. Only facts relevant to the issue
that is the subject of the opinion or
order.**

- - - - OMIT UNNECESSARY FACTS

- - - - FACTS OF CRIME?

3. Accuracy

Every fact should be tied to a portion of the testimony or document in evidence.

**4. Do Not Recount What Each
Witness Said, Witness by Witness.**

5. Tell a Story

DATES??

Link Cases With Unifying Theme

“*Considerations of public policy are appropriate in determining whether a negligence cause of action will lie. For example, in Raisen v. Raisen, 379 So. 2d 352, 354-55 (Fla. 1979), the Supreme Court relied upon public policy reasons to hold that the doctrine of interspousal tort immunity was still viable in Florida. Similarly, the Court evaluated policy considerations in Ard v. Ard, 414 So. 2d 1066, 1067 (Fla. 1982), to hold that in a negligence . . .*”

Knight v. Merhige, 133 So. 3d 1140, 1150 (Fla. 4th DCA 2014)

Unifying Theme

NOT

Case A ruled _____

Case B held _____

Case C involved _____

CONCLUSION

- Short and To The Point
- Ultimate Outcome

**WHAT HAS BEEN THE
BIGGEST CHANGE IN
THE LEGAL PRACTICE?**

ANSWER: The switch to reading on screens.

How Has the Switch to Screens Changed Things?

It affects:

- How we read.
- How we comprehend.
- How we should write.
- Suggestions for writing in the future.

Part I: The Way We Read

“Any technology tends to
create a new human
environment.”

Marshall McLuhan, *The Gutenberg Galaxy*

**The Space
Between The
Words**

DICITUR RET-MEDIOCVMSOLS
ADCOMMVNEFRVTVMSATYR
CONSORTESCELEBRARECHOROS
SECRETASHOMINVMGOETV
VINCINSULTANTESSVAPERFI
SATYROSAMERSAREVADI

When there are no spaces between words they become difficult to read silently you have to sound them out in order to understand them

THE WORD SPACE

- Before the word space: most text read aloud in groups
- Spaces enabled solitary reading, studying
- Screen reading is fairly new

TODAY

- Most Lawyers now Read More on Screens than on Paper.
- Most Offices are Paperless
- What about Courts?

PATTERN

- E-filing +
- E-record keeping =
- E-reading

READING ELECTRONIC PAGES

A paperless reading
environment is different

convincing argument, in that as soon as I appeared to speak before this numerous assembly all their countenances were gilded over with a lively sparkling pleasantness: you soon welcomed me with so encouraging a look, you spurred me on with so cheerful a hum, that truly in all appearance, you seem now flushed with a good dose of reviving nectar, when as just before you sate drowsy and melancholy, as if you were lately come out of some hermit's cell. But as it is usual, that as soon as the sun peeps from her eastern bed, and draws back the curtains of the darksome night; or as when, after a hard winter, the restorative spring breathes a more enlivening air, nature forthwith changes her apparel, and all things seem to renew their age; so at the first sight of me you all unmask, and appear in more lively colours. That therefore which expert orators can scarce effect by all their little artifice of eloquence, to wit, a raising the attentions of their auditors to a composedness of thought, this a bare look from me has commanded. The reason why I appear in this odd kind of garb, you shall soon be informed of, if for so short a while you will have but the patience to lend me an ear; yet not such a one as you are wont to hearken with to your reverend preachers, but as you listen withal to mountebanks, buffoons, and merry-andrews; in short, such as formerly were fastened to Midas, as a punishment for his affront to the god Pan. For I am now in a humour to act awhile the sophist, yet not of that sort who undertake the drudgery of tyrannizing over school boys, and teach a more than womanish



NAVIGATION

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SAY HELLO

↔️ All

Latest on Sun, 04:56 pm

Misha: Brad, thanks for reading. This is going to be long. Better switch to full page mode. There are a ton of must eat places in [...]

Brad Blodgett: I have enjoyed your writing for several months now and thought I'd ask if you currently have any "must eat at" restaurants in Paris.

Misha: Oh brother. Its coming:)

[» Leave a reply](#)

WHAT I'M DOING...

I love Priceline. Westin for \$77, Hyatt for \$60. Shattner and Ben Folds FTW! 8 hrs ago

The mini minibar at Bazaar

by Misha

I don't travel to DC area very often. When I do, I am constantly reminded that I am within driving distance of [minibar](#), the Jose Andres' restaurant within a restaurant, which has been near the top of my list of places to visit for the past year.



Liquid olives

I have seen enough of the dishes created by Jose Andres to know he

To search, type and hit enter

RECENT POSTS

[Pico's Bakery and Taqueria](#)

[Brisa Cocina Mexicana](#)

[Komi \(Washington, DC\)](#)

[Little Big's man getting his due](#)

[Feast and the local cats](#)

[Best meals of 2008 - Manresa \(Los Gatos, CA\)](#)

[The mini minibar at Bazaar](#)

RECENT COMMENTS

Misha on [Pico's Bakery and Taqueria](#)

Cougar Food Blog on [Pico's Bakery and Taqueria](#)

andrea on [Pico's Bakery and Taqueria](#)



Deep reading (study)

vs.

Rapid-information gathering
(screen reading)

F - PATTERN

- **The F-pattern suggests that screen readers are more likely to:**
 1. Look for headings and summaries of content
 2. Read the first paragraph of a text more thoroughly than the rest of the text
 3. Read the first sentence of a paragraph, but skim the rest of the paragraph
 4. Look for structural cues down the left side of the page

has jurisdiction to review the arbitrators' class determination award." Appellants' Brief at 4. In fact, jurisdiction is the heart of this dispute. When Jones failed to invoke a ground for review of the award under the Federal Arbitration Act, he not only failed to establish the merits of his case; he failed to invoke the trial court's jurisdiction. The district court lacks jurisdiction in cases, such as this one, where the statute defines, enlarges, or restricts the class of claims the court may decide or the relief it may afford. *Heart Hospital IV, L.P. v. King*, 116 S.W.3d 831, 834 (Tex. App.—Austin 2003, pet. denied); *Sierra Club v. TNRCC*, 26 S.W.3d 684, 688 (Tex. App.—Austin 2000), *aff'd* 70 S.W.3d 809 (Tex. 2002). This is not a case such as *Dubai Petroleum*, where the jurisdictional argument concerned a plaintiff's failure to meet a "statutory prerequisite." *Dubai Pet. Co. v. Kazi*, 12 S.W.3d 71, 76 (Tex. 2000) (concerning statutory requirement that a foreign plaintiff must be a citizen of a country with "equal treaty rights"). Rather, the jurisdictional defect in this case is plaintiff's failure to bring a claim under the restricted class of claims that may be brought to challenge an arbitration award. The FAA and federal law only permit judicial review of arbitration awards

MAKE STRUCTUE EASY TO FOLLOW

- Headings
- Paragraph topic sentences
- Bookmarks / links



Statement of Facts

Summary of Argument

Argument and Authorities

I. The evidence was legally insufficient to prove the standard of care or that Yellow Cab breached its standard of care.

A. Polito was required to establish the standard of care and a breach of the standard.

1. In similar negligence cases, Texas courts have required some evidence of the standard of care and a breach of that standard.

2. Additionally, because this case involved specialized equipment and industry standards, Polito was required prove the standard of care through expert testimony.

B. Polito failed to prove either the standard of care or a breach of the standard of care through expert testimony.

C. Even if expert testimony were not required, Polito failed to provide legally sufficient evidence to prove that the standard of care for dispatch equipment or a breach of that

1. Polito failed to prove the standard of care or the breach of the standard for the placement of the radio receiver.

2. Polito failed to prove the standard of care or the breach of the standard for the placement of the computer screen.

3. Polito failed to prove the standard of care or the breach of the standard regarding the sound made by the radio receiver.

D. The evidence conclusively established that Yellow Cab did not

Overview

John Carreon owned a taxi cab, which he drove as an independent contractor. The cab had dispatch equipment installed by Greater San Antonio Transportation Company, which operates under the name “Yellow Cab.”

Carreon collided with John Polito’s motorcycle after crossing into the wrong lane of traffic as he approached a blind turn. This appeal concerns whether Yellow Cab’s placement or maintenance of dispatch equipment breached its standard of care, and whether any breach was a foreseeable cause of the accident.

The accident

Carreon conceded the accident was “my fault.” RR 2:284-85. It occurred when he was driving home, approaching a blind curve on Blanco Road. RR 2:274, 291-93; P-X 17-19.



WHITE SPACES FOR VISIBLE PAUSES

- Moderate white space makes a document easier to read
- Create white space with
 - Shorter sentences
 - Shorter paragraphs
 - Frequent headings
 - Lists, bullets
 - Omit unnecessary words

7. Don't be afraid of the white space

Actually it's really hard to overestimate the importance of white space. Not only does it help to **reduce the cognitive load** for the visitors, but it makes it possible to perceive the information presented on the screen. When a new visitor approaches a design layout, the first thing he/she tries to do is to scan the page and divide the content area into digestible pieces of information.

Complex structures are harder to read, scan, analyze and work with. If you have the choice between separating two design segments by a visible line or by some whitespace, it's usually better to use the whitespace solution. **Hierarchical structures reduce complexity** (Simon's Law): the better you manage to provide users with a sense of visual hierarchy, the easier your content will be to perceive.



White space is good. Cameron.io uses white space as a primary design element. The result is a well-scannable layout which gives the content a dominating position it deserves.

8. Communicate effectively with a “visible language”

In his papers on effective visual communication, Aaron Marcus states [three fundamental principles](#) involved in the use of the so-called “*visible language*” — the content users see on a screen.

CHUNKING

Readers Process Information in Chunks

7135232358

vs.

713 – 523 – 2358

EXAMPLE: NO CHUNKING

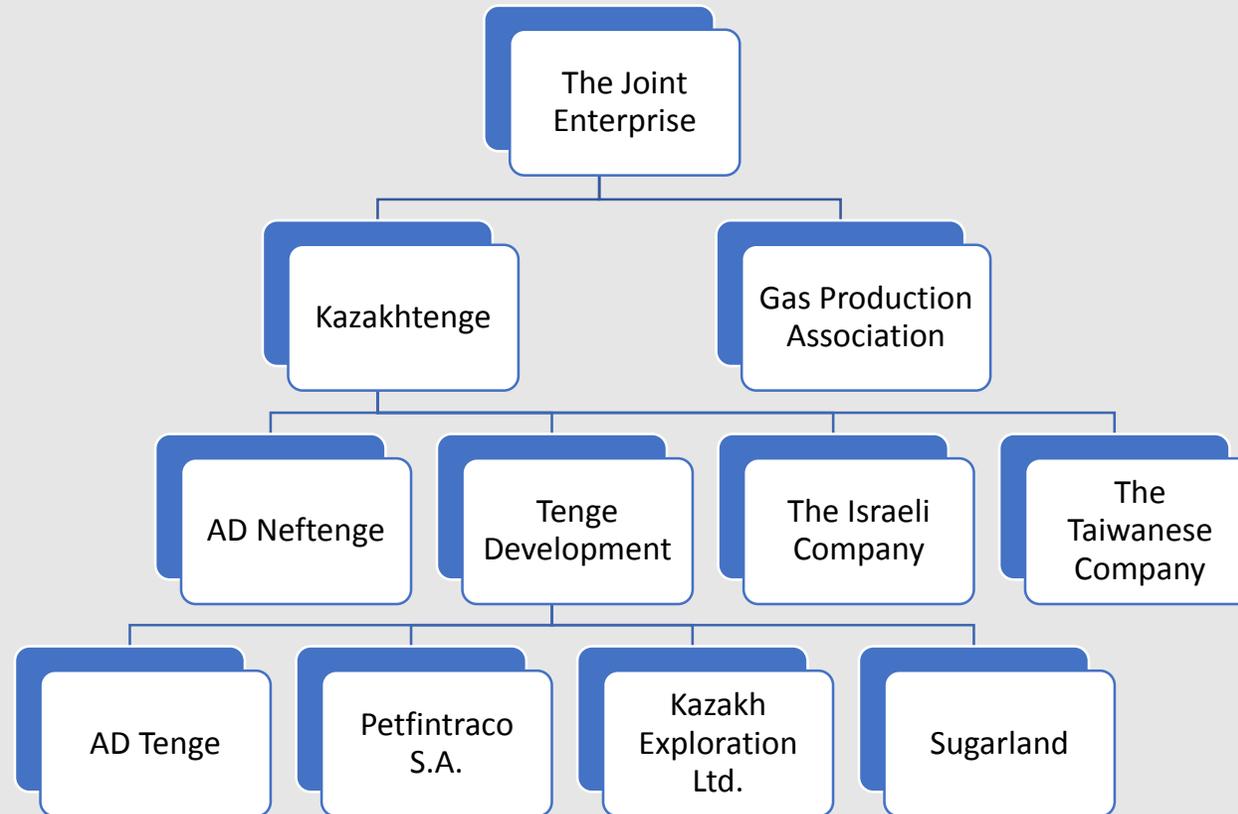
The elements of negligence are the existence of a legal duty, a breach of that duty, and damages that proximately resulted from that breach.

EXAMPLE – CHUNKING

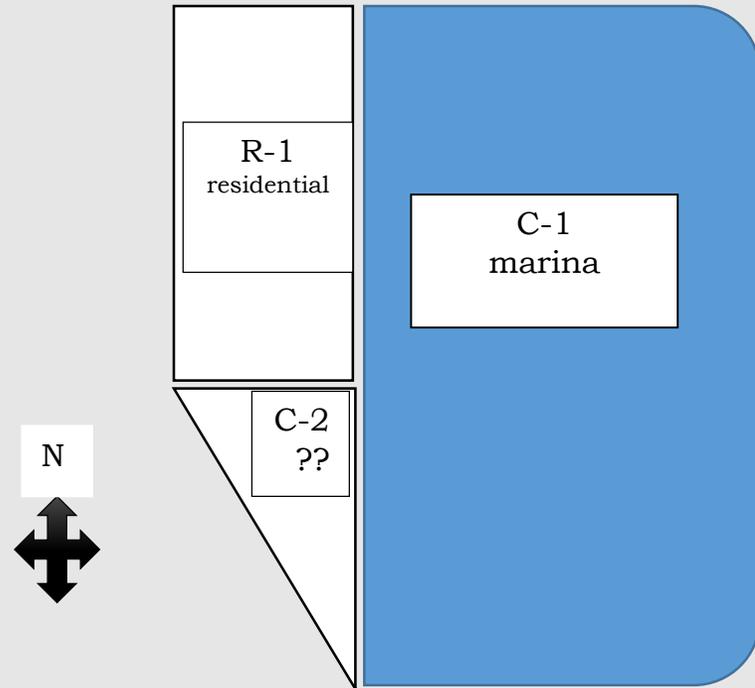
The elements of negligence are:

- (1) the existence of a legal duty,
- (2) a breach of that duty, and
- (3) damages,
- (4) that proximately resulted from the breach.

USE VISUALS



It is a single piece of property, divided into three parcels: R-1, C-1, and C-2. The parcels are aligned like this:



STATEMENT OF THE CASE

Nature of the case

Action for tortious interference and breach of contract arising from theft of business opportunity. CR 94-111.

Trial court

343th District Court, Harris County, Texas, Hon. Conrad Wilson presiding.

Trial court's rulings

Final Judgment based in part on jury verdict, but:

- (1) \$66.5 actual damages award against NorEnergy remitted to of \$31.16 million;
- (2) Patricia Smith jointly and severally liable for NorEnergy's actual damages based on jury finding of alter ego, but not jointly and severally liable for exemplary damages;
- (3) two companies found by jury to be alter egos by jury were granted JNOV by court. *See CR 336-60 (jury charge).*

CONSIDERATIONS

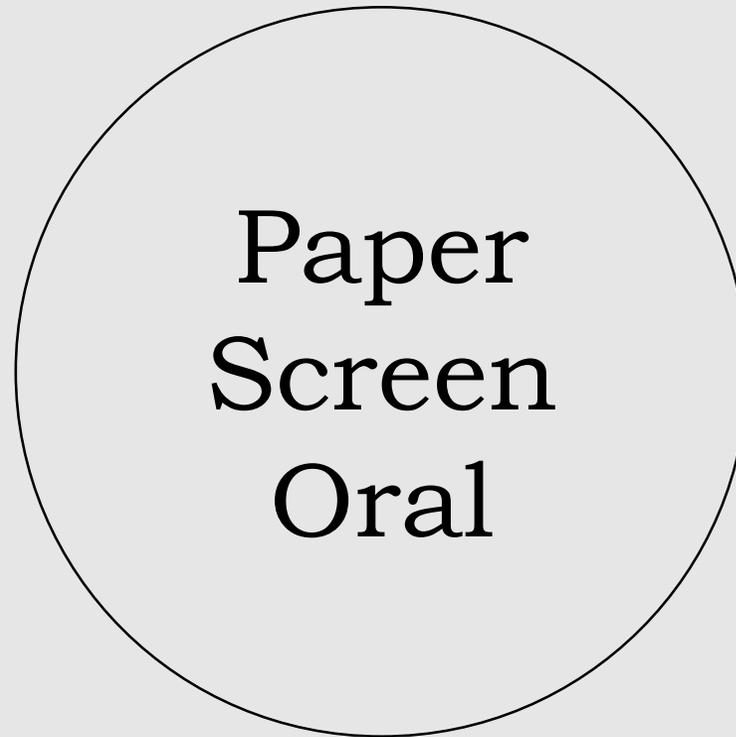
- Names (witnesses, law enforcement officers, victims)
- Account Numbers
- Financial Information
- Explicit Detail of Unpleasant Facts
- Medical Conditions
- Other Unnecessary Information

Summary

1. Make time to read good writing

2. Consider your audience

3. Consider your medium



4. Omit needless words!

5. Roadmap, roadmap,
roadmap

6. Link cases with unifying theme that supports your argument

7. Omit Unnecessary Facts

8. Seek out suitable mentors,
both contemporaries and
senior

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