



KILLING ME SOFTLY: *BRIEF-WRITING TIPS, THE MUSICAL*

Justice Elizabeth Kerr, 2nd Court of Appeals

WHAT ARE WORDS FOR?

MISSING PERSONS (1982)

- Convey information

WHAT ARE WORDS FOR?

MISSING PERSONS (1982)

- Convey information
- Document an agreement

WHAT ARE WORDS FOR?

MISSING PERSONS (1982)

- Convey information
- Document an agreement
- Explain a position

WHAT ARE WORDS FOR?

MISSING PERSONS (1982)

- Convey information
- Document an agreement
- Explain a position
- **Persuade the reader**



MANIC MONDAY

THE BANGLES (1985)

Be Considerate

Long, dense briefs get skimmed,
not read

Judges appreciate concise briefs
that convey their points quickly

Be aware of the volume of briefs
that judges deal with

Yours is not their only case



MR. BLUE SKY

ELECTRIC LIGHT ORCHESTRA (1978)

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that convey their points quickly

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that judges deal with

Yours is not their only case

Be Clear

Clarity equals persuasion

More likely to lose if judge can't
quickly understand your best
argument

Legalese and long sentences reduce
comprehension

Can a reasonably intelligent high-
schooler understand your brief?



TAKIN' CARE OF BUSINESS

BACHMAN-TURNER OVERDRIVE (1974)

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Long, dense briefs get skimmed, not read

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Clarity equals persuasion

More likely to lose if judge can't quickly understand your best argument

Legalese and long sentences reduce comprehension

Can a reasonably intelligent high-schooler understand your brief?

Be Competent

Crisp, readable briefs signal confidence in arguments

Ability to explain complex legal concepts in simple terms reflects deep understanding of the law

Judges and staff attorneys will trust you

MAKE ME SMILE

CHICAGO (1970)

- Put strongest issues first—and pare them down
- Keep the standard of review firmly in mind
- What are the legally significant facts?
- Make sure error was preserved
- If error, was it harmless? If harmful, why?
- Double-check and update research

COA2 has **Westlaw** only. If you're citing an unpublished opinion in LEXIS, give us the full citation including the **case number**.



WALK THIS WAY

AEROSMITH (1975, 1986)

- Make the cover of your brief page one so that all page #s match PDF #s
- Use table of contents to create a meaningful roadmap
- Set the stage with a short introduction/executive summary
- Use speaking headings throughout (and make sure they're in the table of contents)
- Take advantage of TRAP 38.1(k)(2): include optional appendix material if useful

Plain English

Most effective way to communicate; reduces chances of confusion.

Write like you speak

But make it more polished. Read your work aloud.

Elevated tone

Save the outrage for the jury. No personal attacks on opponent or court. Be the grownup.

“Clearly, ...”
“Obviously, ...”

Ix-nay.

GOOD VIBRATIONS

BEACH BOYS (1966)

THAT'S NOT MY NAME

THE TING TINGS (2008)

Avoid parties' procedural designations

No need to explain shortened party names if no one will be confused

Consider using descriptors

Can the alphabet soup

THAT'S NOT MY NAME

THE TING TINGS (2008)

Avoid parties' procedural designations

Appellant, Appellee not helpful as shorthand

No need to explain shortened party names if no one will be confused

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Can the alphabet soup

THAT'S NOT MY NAME

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Avoid parties' procedural designations

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Defendant Aetna Casualty & Surety Company (hereinafter referred to as "Aetna")

Consider using descriptors

Can the alphabet soup

THAT'S NOT MY NAME

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Consider using descriptors

the Bank, Borrower, Officer Smith, Counselor Troi

Can the alphabet soup

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Atchison, Topeka and Santa Fe Railway ≠ "ATSFR"

SUPERCALIFRAGILISTICEXPIALIDOCIOUS

JULIE ANDREWS/DICK VAN DYKE (1963)



Replace phrases with one word

Legalese. Yuck.

Reconsider fancy-schmancy words



SIMPLY IRRESISTIBLE

ROBERT PALMER (1988)

WORDY

Prior to, subsequent to
Due to the fact that, for the reason that
At the present time, at this point in time
In the event that
Despite (notwithstanding) the fact that
In close proximity
Adequate (sufficient) number of
During such time as
Is able to, is capable of
Is authorized to, is empowered to
Is desirous of
In order to

NOT WORDY

Before, after
Because
Now, currently
If
Although
Near
Enough
While
Can
May
Wants
To

FREE BIRD

LYNYRD SKYNYRD (1973)

Disinter the poor verb that's encrypted within a nominalization

TRY IT NOW

In the course of my preparation of dinner, I made the decision to employ a substitution of Greek yogurt for sour cream in order to effect a reduction in calories. [30 words]

FREE BIRD

LYNYRD SKYNYRD (1973)

In the course of my **preparation** of dinner, I made the **decision** to employ a **substitution** of Greek yogurt for sour cream in order to effect a **reduction** in calories. [30 words]

POSSIBLE FIX 1

While **preparing** dinner, I **decided** to **substitute** Greek yogurt for sour cream to **reduce** calories. [15 words]

FREE BIRD

LYNYRD SKYNYRD (1973)

In the course of my **preparation** of dinner, I made the **decision** to employ a **substitution** of Greek yogurt for sour cream in order to effect a **reduction** in calories. [30 words]

POSSIBLE FIX 2

While preparing dinner, I substituted Greek yogurt for sour cream to reduce calories. [13 words]

FREE BIRD

LYNYRD SKYNYRD (1973)

In the course of my **preparation** of dinner, I made the **decision** to employ a **substitution** of Greek yogurt for sour cream in order to effect a **reduction** in calories. [30 words]

POSSIBLE FIX 3

While preparing dinner, I substituted lower-calorie Greek yogurt for sour cream. [11 words]

FREE BIRD

LYNYRD SKYNYRD (1973)

In the course of my **preparation** of dinner, I made the **decision** to employ a **substitution** of Greek yogurt for sour cream in order to effect a **reduction** in calories. [30 words]

POSSIBLE FIX 4

I made dinner using lower-calorie Greek yogurt instead of sour cream. [11 words]

FREE BIRD

LYNYRD SKYNYRD (1973)

Another example of freeing the verb

TRY IT NOW

The court can arrive at a determination of the question by application of well-settled principles of law. [17 words]

FREE BIRD

LYNYRD SKYNYRD (1973)

Another example of freeing the verb

TRY IT NOW

The court can arrive at a **determination** of the question by **application** of well-settled principles of law. [17 words]

POSSIBLE FIX

The court can rule by applying settled legal principles. [9 words]



SPARE ME THE DETAILS

THE OFFSPRING (2003)

Have pity on your readers and don't overparticularize.

"If it isn't necessary to understanding the issues, and if it doesn't add human interest, then leave it out." – B. Garner, *The Winning Brief*, Tip # 82.



THE LONG AND WINDING ROAD

THE BEATLES (1970)

Get to the point by cutting superfluous, throat-clearing lead-ins

“There is...”

“There are...”

“It is...”

Active Voice

Assigns responsibility, uses fewer words

some exceptions:

When the actor is unimportant or unknown, or you want to hide the actor's identity

When the focus is on the thing being acted on

When it just sounds better

I SHOT THE SHERIFF

BOB MARLEY (1973)



IT'S THE LITTLE THINGS

SONNY & CHER (1967)
ROBERT EARL KEEN (1993)
ALICE COOPER (2000)

Reword prepositional phrases to
minimize wordiness

Use possessives rather than *of*
phrases

TRY IT NOW

*Tipton argues that mistakes on the part of
Anselm have resulted in delays by Tipton.*

[15 words; 4 prepositions]



IT'S THE LITTLE THINGS

SONNY & CHER (1967)
ROBERT EARL KEEN (1993)
ALICE COOPER (2000)

Reword prepositional phrases to
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Use possessives rather than *of*
phrases

POSSIBLE FIX 1

*Tipton argues that Anselm's mistakes caused
Tipton's delays.*

[8 words; 0 prepositions]



IT'S THE LITTLE THINGS

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ROBERT EARL KEEN (1993)
ALICE COOPER (2000)

Reword prepositional phrases to
minimize wordiness

Use possessives rather than *of*
phrases

POSSIBLE FIX 2

*Tipton argues that Anselm's mistakes delayed
Tipton.*

[7 words; 0 prepositions]



COMFORTABLY NUMB

PINK FLOYD (1979)

DO THIS

NOT THIS

In *Fisher*, the supreme court remanded the case for a new trial. The facts in that case were similar to the facts here. Therefore, this court should also remand for a new trial. [33 words]



ALIVE AND KICKING

SIMPLE MINDS (1985)

DO THIS

In *Fisher*, the supreme court concluded—on similar facts—that the case must be remanded for a new trial. Just so here.

[22 words]

NOT THIS

In *Fisher*, the supreme court remanded the case for a new trial. The facts in that case were similar to the facts here. Therefore, this court should also remand for a new trial.



COMFORTABLY NUMB

PINK FLOYD (1979)

DO THIS

NOT THIS

Cardone's amended petition sets forth new, severable claims. Cardone has the burden to establish jurisdiction over those claims. However, Cardone cannot show that jurisdiction exists.

[25 words]



LEARN TO FLY

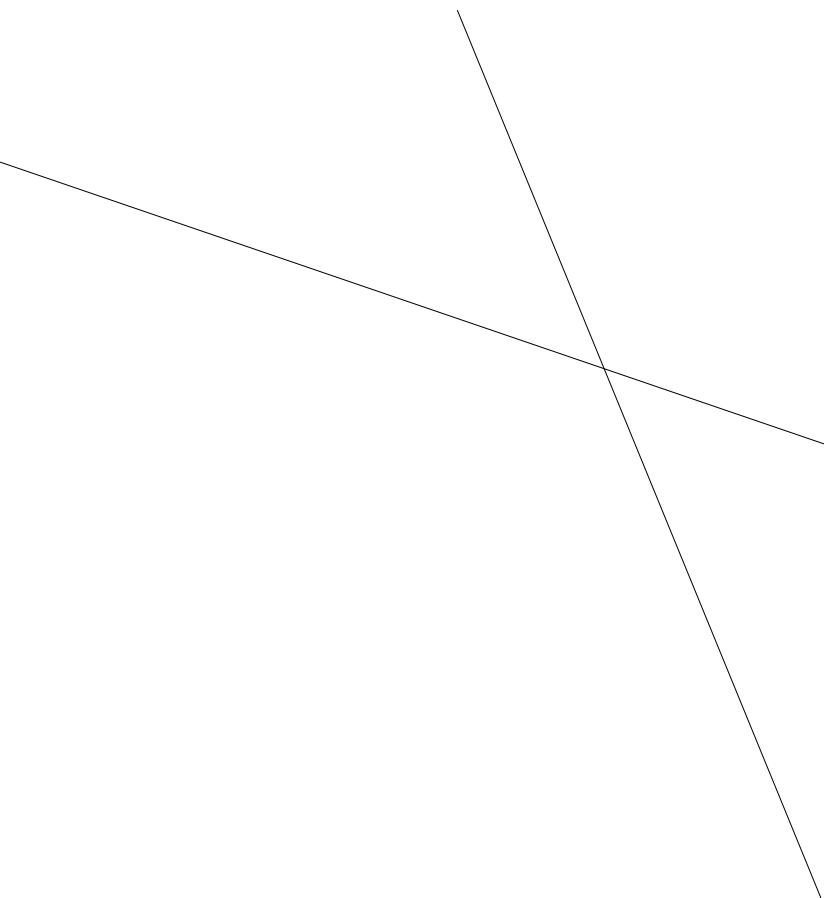
FOO FIGHTERS (1999)

DO THIS

Because Cardone's amended petition sets forth new, severable claims, Cardone must establish jurisdiction over those claims. This it cannot do. [20 words]

NOT THIS

Cardone's amended petition sets forth new, severable claims. Cardone has the burden to establish jurisdiction over those claims. However, Cardone cannot show that jurisdiction exists.



DAZED AND CONFUSED

LED ZEPPELIN (1969)

Help your readers by hyphenating adjective phrases

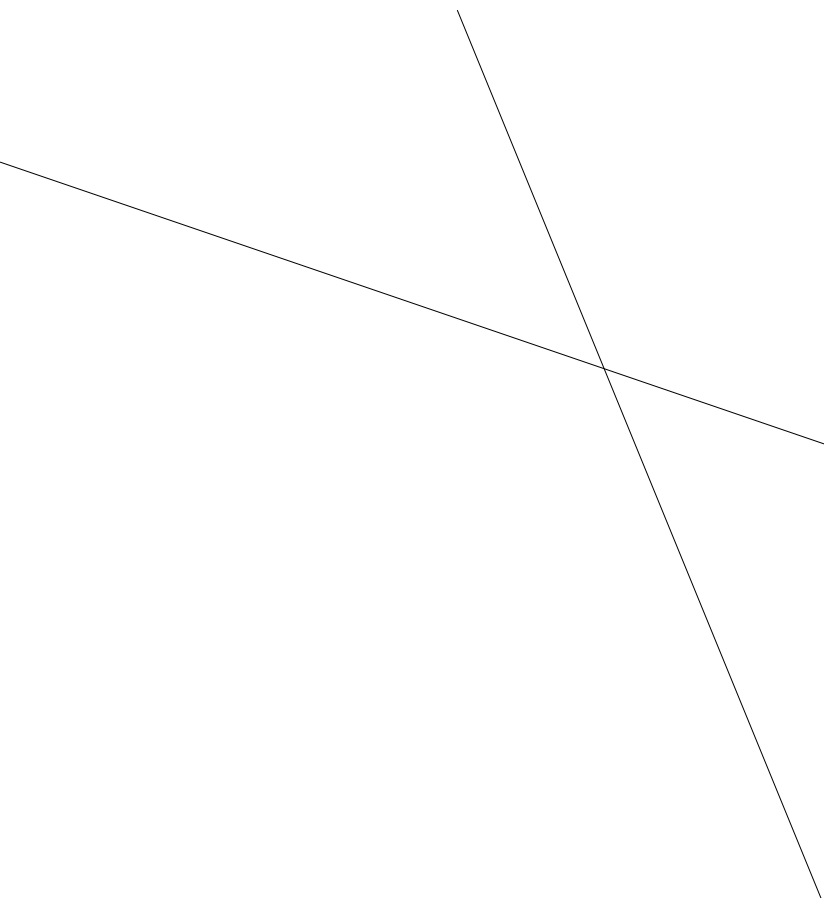
TRY IT NOW

Jones challenges a county approved billboard siting restriction.

This case involves cessation of production clauses.

Johnson relied on a last known criminal activity report.

An employee placed a yellow tow warning notice sticker on the car.



DAZED AND CONFUSED

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Help your readers by hyphenating adjective phrases

TRY IT NOW

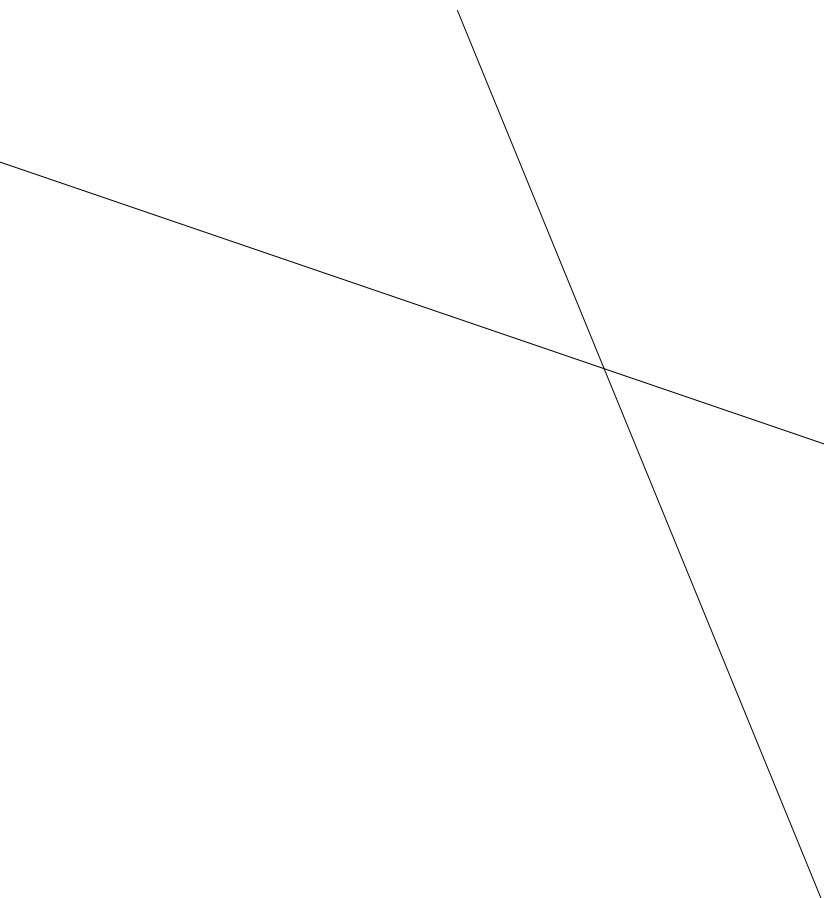
Jones challenges a county approved billboard siting restriction.

Jones challenges a county-approved billboard-siting restriction.

This case involves cessation of production clauses.

Johnson relied on a last known criminal activity report.

An employee placed a yellow tow warning notice sticker on the car.



DAZED AND CONFUSED

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Jones challenges a county approved billboard siting restriction.

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This case involves cessation-of-production clauses.

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Jones challenges a county approved billboard siting restriction.

This case involves cessation of production clauses.

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An employee placed a yellow tow warning notice sticker on the car.

An employee placed a yellow tow-warning-notice sticker on the car.



AND SHE WAS

TALKING HEADS (1985)

Start the occasional sentence with a punchy “And” or “But” or one of the other coordinating conjunctions (*Or, Nor, For, Yet, So*)
without a comma after

COMPARE AND CONTRAST

However, the chickens came home to roost.
But the chickens came home to roost.



YOU'VE MADE ME SO VERY HAPPY

BLOOD, SWEAT & TEARS (1969)

Every word matters...for pithiness *and* for word limits


TRY IT NOW

Extremely small

Cried loudly

Became invisible

Horrible tragedy



YOU'VE MADE ME ~~SO VERY HAPPY~~ ECSTATIC BLOOD, SWEAT & TEARS (1969)

Every word matters...for pithiness *and* for word limits


TRY IT NOW

Extremely small *minute, minuscule, microscopic, tiny*

Cried loudly

Became invisible

Horrible tragedy



YOU'VE MADE ME ~~SO VERY HAPPY~~ ECSTATIC

BLOOD, SWEAT & TEARS (1969)

Every word matters...for pithiness *and* for word limits


TRY IT NOW

Extremely small *minute, minuscule, microscopic, tiny*

Cried loudly *wailed, howled, bawled*

Became invisible

Horrible tragedy



YOU'VE MADE ME ~~SO VERY HAPPY~~ ECSTATIC

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YOU'VE MADE ME ~~SO VERY HAPPY~~ ECSTATIC BLOOD, SWEAT & TEARS (1969)

Every word matters...for pithiness *and* for word limits

TRY IT NOW

Extremely small	<i>minute, minuscule, microscopic, tiny</i>
Cried loudly	<i>wailed, howled, bawled</i>
Became invisible	<i>vanished, disappeared</i>
Horrible tragedy	<i>catastrophe, calamity</i>

COME TOGETHER

THE BEATLES (1969)

Keep a sentence's subject and predicate close to each other

HOW NOT TO DO IT

The cases [SUBJECT] on which Markowitz relies, dealing with the narrow issue of whether state statutes of limitation can time-bar federal claims that are subject to different limitations period, can be distinguished [PREDICATE].

COME TOGETHER

THE BEATLES (1969)

Keep a sentence's subject and predicate close to each other

HOW NOT TO DO IT

The cases [SUBJECT] on which Markowitz relies, dealing with the narrow issue of whether state statutes of limitation can time-bar federal claims that are subject to different limitations period, can be distinguished [PREDICATE].

Possible fix:

Markowitz cites cases involving whether state statutes of limitation can time-bar federal claims to which different limitations periods apply. Those cases are distinguishable.

EVERY PICTURE TELLS A STORY

ROD STEWART (1971)

- Complicated organizational structure? Use a chart for easy comprehension
- Easement case, boundary dispute? Include a map or plat within the brief itself
- Car wreck, property damage, evidence of physical assault, etc.? Drop photos into the fact statement



BEFORE HE CHEATS

CARRIE UNDERWOOD (2005)

Tempted to evade word limits by screenshotting and dropping an image consisting of huge swaths of text?

DON'T

SUDDENLY I SEE

KT TUNSTALL (2005)

THE PURCHASER HEREBY WAIVES ITS RIGHTS, IF ANY, TO INSIST UPON AN INSPECTION BEFORE DELIVERY AND ACCEPTS THE MERCHANDISE AS IS, WHERE IS, WITHOUT RECOURSE. **WAS IT EASY FOR YOU TO INSTANTLY COMPREHEND WHAT THIS SENTENCE IS SAYING? THOUGHT NOT.**

Reasons abound to use bulleted (or numbered) lists in briefs:

- they draw the eye in;
- they allow the reader to absorb information more efficiently; and
- by presenting chunks of information within white space, they give natural prominence to that material.

In Headings of More Than a Few Words—and Especially When They’re Complete Sentences—Don’t Subject the Reader to Initial Caps. **Try bolding the words instead.**



UNBELIEVABLE

EMF (1991)

AS-IS SNIPPET FROM AN ACTUAL BRIEF WRITTEN BY AN ACTUAL LAWYER

Appellee's attorney ask her a question which assume' s Appellant is Ok with this behavior and Appellee is able to answer the question that takes it for granite Appellant is ok with this behavior.

FOOTLOOSE

KENNY LOGGINS (1984)

Make your footers useful

The usual:

3

FOOTLOOSE

KENNY LOGGINS (1984)

Make your footers useful

The usual:

3

One option:

BRIEF OF APPELLANT CISCO CORPORATION

Page 3

FOOTLOOSE

KENNY LOGGINS (1984)

Make your footers useful

The usual:

3

An even better option:

No. 02-22-00175-CV; *Cisco Corp. v. Maxwell Int'l & F. Robertson*
BRIEF OF APPELLANT CISCO CORPORATION

Page 3 of 14



BONUS TRACKS



NO SUCH THING

JOHN MAYER (2001)

As such

“You keep using that word. I do not think it means what you think it means.” – Inigo Montoya (The Princess Bride)

Grammatically, “as such” is **not** the equivalent of “therefore” (or “accordingly,” “thus,” or any similar concept).

Garner’s Modern English Usage calls the phrase “faddish” when used this way.



FOLSOM PRISON BLUES

JOHNNY CASH (1955)

“Fulsome”—*I do not think it means what you think it means, Part 2*

Traditionally, *fulsome* means “abundant to excess” (in a bad way) or “offensive to normal tastes or sensibilities” and hence is a negative word.

Best to avoid when you mean “very full” or “abundant” or “thorough.”



OXFORD COMMA

VAMPIRE WEEKEND (2007)

You'll rarely go wrong by including the Oxford (serial) comma

SPOT THE PROBLEM

Upon realizing his mistake, Bradford immediately notified Acme Brick, Starnes Construction, Steptoe and Johnson and Kinsey.

At my grandfather's funeral there were two strippers, his wife and his sister.

Wordplay

With the **Oxford Comma**:

We invited the rhinoceri, Washington, and Lincoln.



Without the Oxford Comma:

We invited the rhinoceri, Washington and Lincoln.



©Kris Kellman 1911

MY FAVORITE MISTAKE

SHERYL CROW (1998)



Discreet vs. discrete

MY FAVORITE MISTAKE

SHERYL CROW (1998)

- *Discreet vs. discrete*
- *Is comprised of*

MY FAVORITE MISTAKE

SHERYL CROW (1998)

- *Discreet vs. discrete*
- *Is comprised of*
- *Irregardless*

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- *Affect (vb.) vs. effect (n., vb.)*

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- *Discreet vs. discrete*
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- *Who[ever] vs. whom[ever]*

MY FAVORITE MISTAKE

SHERYL CROW (1998)

- *Discreet vs. discrete*
- *Is comprised of*
- *Irregardless*
- *Affect (vb.) vs. effect (n., vb.)*
- *Who[ever] vs. whom[ever]*

Give the book to whomever wants it.

John evicted Max, who John had rented the house to
for ten years.

MY FAVORITE MISTAKE

SHERYL CROW (1998)

- *Discreet vs. discrete*
- *Is comprised of*
- *Irregardless*
- *Affect (vb.) vs. effect (n., vb.)*
- *Who[ever] vs. whom[ever]*

Give the book to [whoever wants it].

John evicted Max, [whom John had rented the house
to ...] [to whom John had rented the house ...].

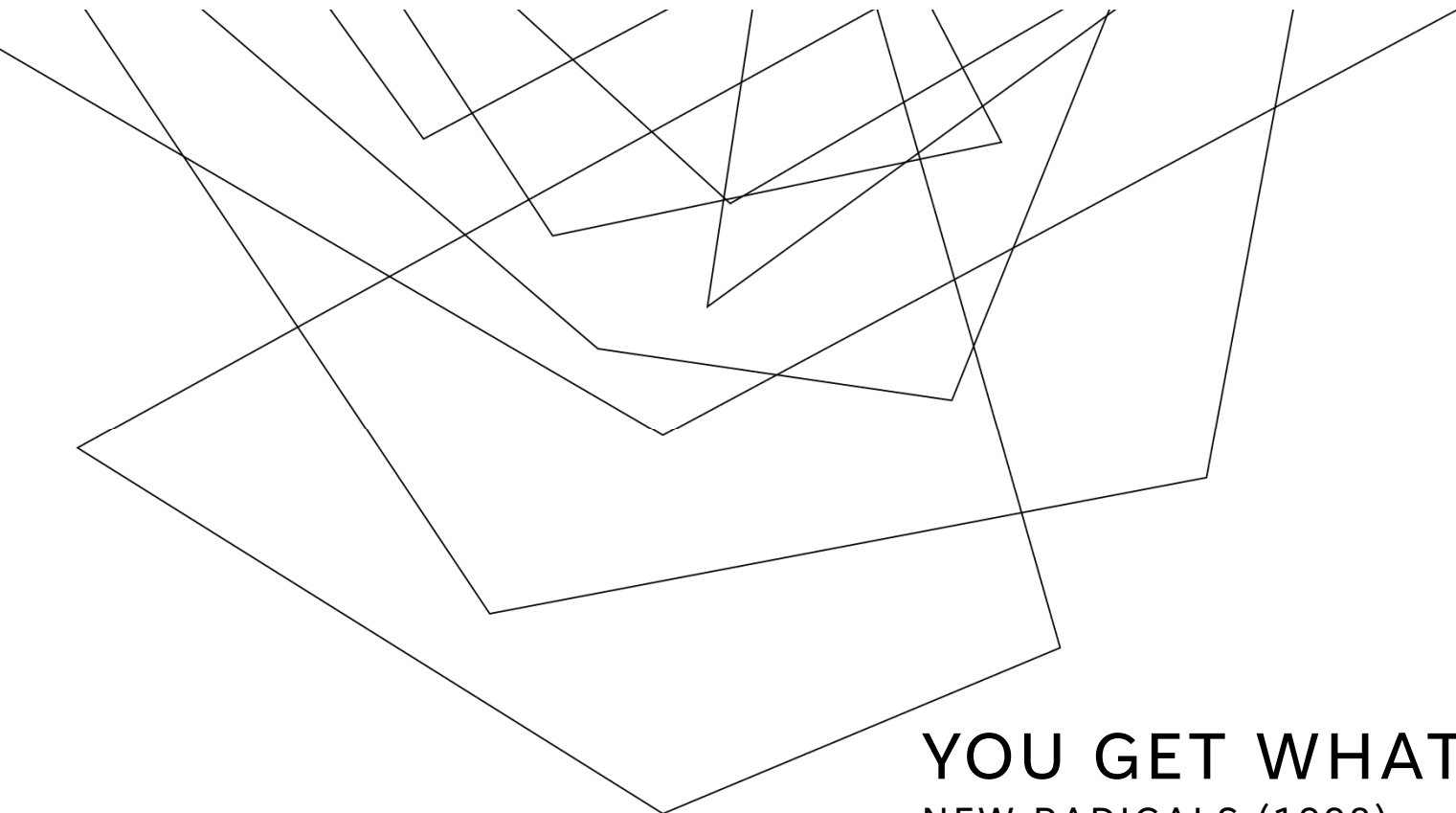


IN THE YEAR 2525

ZAGER & EVANS (1969)

From Grok:

Bottom line: In 2025, writing a 60-page brief full of ‘hereinafters,’ ‘aforestateds,’ and passive-voice throat-clearing is malpractice. The winning move is 25-35 pages (or whatever the local limit is), active voice, short sentences, zero Latin unless absolutely necessary, and arguments that a smart non-lawyer could follow. Courts reward it, and your client’s chances go up—dramatically.



YOU GET WHAT YOU GIVE

NEW RADICALS (1998)

thank you!