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A FEW LESSONS FROM THE MASTER CRAFTSMAN: JUSTICE JOHN SIMONETT THE WRITER

Honorable Kevin G. Ross[†]

Justice John Simonett's baritone voice fills the room every time I read the facts section of one of his judicial opinions. I don't just imagine his voice, I hear it. He's standing there speaking to me, varying his pace and pausing subtly at every comma for effect. He slows and lowers his pitch to emphasize the key element in each critical sentence, which I am persuaded he arranged specifically to hold my interest. Just as I hear his voice, I also see the events of his case unfolding. He stays in the room to explain the sometimes-complex legal issues and the consequent decision so lucidly and convincingly that I never scratch my head confused or roll my eyes doubtful.

I assume from informal conversations in legal circles over the years that most Minnesota lawyers and judges and legal academics have similarly encountered Justice Simonett while reading his work. They seem to agree that he was the best writer to have graced our courts. And so it is not a stretch to conclude that we would improve our writing if we follow his lessons. But he left no treatise, or even an article, teaching the features of good legal writing. So if we want to learn his lessons, we must attempt to infer them from his work. This essay is such an attempt, and I hope other more thoughtful and informative attempts will follow.

I.

Although having personally known Justice Simonett is not necessary to one's recognizing and appreciating the exceptional quality of his writing, those of us who had the honor of often engaging with him personally, or at least occasionally hearing him

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speak, will instantly recognize the relationship between his spoken word and his written word. It is this familiarity between written and spoken word that spotlights arguably the most important quality of his writing and the essential lesson that every legal writer can draw from it.

I remember meeting Justice Simonett after he retired from the supreme court and returned to practice law in the final stretch of his celebrated legal career. He had invited me to lunch at the Minneapolis Club to welcome me to Greene Espel, the law firm he joined after he left the court. A parade of lawyers manufactured reasons to wander near our table and shake his hand. Between those interruptions, Justice Simonett chatted enthusiastically about the richness and nuances of English vocabulary and the care that ought to go into all writing, especially legal writing. The conversation turned to fatherhood, and that digression is what I remember most. He demurred when I commented that I was amazed by the published recollection of one of his six children that she had never heard him raise his voice. Justice Simonett lifted the corner of his mouth and shook his head. Then his smooth voice began, “Well, that’s not the whole of it.” The short pause that followed the “Well” led me to predict a humanizing confession. He continued slowly, “The whole truth is that, on more than one occasion, I did *threaten* to raise my voice.”

His arrangement and timing of those two short sentences were perfect. They were just as he was—thoughtful, witty, humble, wry, clever, wise, eloquent. And his writing was exactly the same. He attained what writers like to call a “voice.” His isn’t the kind of pompous voice that fortifies a writer’s insecurities behind a wall of erudite vocabulary surrounded by a moat of ostentatious phraseology, like in this sentence, for example. It is instead genuine; and so the reason it seems we can hear Justice Simonett’s audible voice when we read his writing is that his writing is purely himself, uninfected by pretense. He wrote just as he spoke and as he was—approachable and unassuming, and yet somewhat grand. His writing is graceful because he was graceful. And it is persuasive in large part because it is *authentic*.

So this is the first and critical lesson of Justice Simonett’s writing: ***Be Authentic***. I suggest that no legal writing can be as persuasive as his unless it is similarly authentic, in the writer’s own voice, conveying the writer’s true character. It will closely, if not exactly, follow the style one would expect to hear if the same writer

were speaking extemporaneously. This lesson might be discouraging news to the writer wanting merely to adopt Justice Simonett's style, but a copy never has the quality of the original. If we hope to write as persuasively as he wrote, we must write as authentically as he wrote. It won't do to copy his or any other writer's style. Impersonation is unpersuasive because persuasion requires credibility, and readers can detect a fraud.

Justice Simonett was no fraud. His authenticity in writing encompassed not just style but substance. Because he was familiar with classical and modern literature, history, philosophy, politics, and science, his legal writing could occasionally, and authentically, borrow compelling illustrations from these disciplines. He could naturally include a literary reference because he was so acquainted with it that he saw how it fit his subject, not because he had a handy book of snappy quotations beside his desk. He could drop a scholarly reference in the middle of his common-speaking, prosy explanation of some complex problem, and the combination was never awkward. And that's because, like the combination, he was himself similarly both common-speaking and scholarly; he was the country lawyer and the brilliant, walking liberal arts library. Here, for example, he casually references Shakespeare during his conversational, common-sense introduction of a confusing legal issue in a way that enriches and simplifies:

“Atmosphere” (in its ordinarily understood physical sense) is another name for “air,” but—and this is what is important—it is air thought of as being in a particular place. We would not say that the atmosphere in a room is stuffy, but rather that the air is stuffy. We think of atmosphere as the air surrounding our planet, as when Hamlet spoke of “this most excellent canopy, the air.” (Act II, scene ii.) So it is that we speak of releasing a balloon into the atmosphere but letting the air out of a tire. Our problem here is how the term “atmosphere” should be understood when used in a pollution exclusion.¹

Justice Simonett's writing was authentic; good writing always is.

1. Bd. of Regents of Univ. of Minn. v. Royal Ins. Co. of Am., 517 N.W.2d 888, 892 (Minn. 1994) (explaining the meaning of pollution exclusion clauses in comprehensive general insurance liability policies).

II.

If the most important lesson from Justice Simonett's writing is *be authentic* (even though this means writing in a voice that does not resemble Justice Simonett's), the next lesson must be: ***Be Educated***. This idea does not arise only from inference. It rests on Justice Simonett's express view that rich legal writing requires rich insight. Although he coyly responded to the question by supreme court historians attorney Thomas Boyd and Justice Paul Anderson, "How are you able to write so well?" by quipping, "Nobody knows!" he added, "I read a lot of books." If we want to write as persuasively as Justice Simonett wrote, we must also read a lot of books.

Ostensibly repeating an idea of Professor Irving Younger's, but undoubtedly expressing a view that he adopted as his own, Justice Simonett emphasized that lawyers and judges must continually educate themselves:

Advocates, if they are to be true to their calling, if they are to give voice to the community's aspirations, must, [Younger] thought, be familiar with literature, art, music, history, and philosophy; they must think through to first principles. Lawyers must cultivate lucidity, candor, aesthetics, efficacy, and elegance. . . . Appellate judges . . . would profit in writing their opinions by reflecting on a Verdi opera or a Gogol short story.²

He reflected on an earlier period, "To refer to a colleague as learned counsel meant not that counsel was particularly learned in legal matters but learned generally."³ Not surprisingly, Justice Simonett typified the *be educated* lesson. In the same article, for instance, in fewer than nine pages, he seamlessly referenced or quoted Cicero, Aristotle, Shakespeare, Kafka, Harper Lee, and Dickens, among others.

This is not to suggest that Justice Simonett used his writing to showcase his broad education. One can hardly find direct cultural references in his judicial opinions, for example, despite his being truly learned in the classic sense. This informs us that he believed that the writer should value knowledge not to impress readers but to deepen the writer's perspective. I recall a practical application. Justice Simonett once suggested that I suspend my puzzling over a

2. John E. Simonett, *Forensic Rhetoric and Irving Younger*, 73 MINN. L. REV. 805, 812 (1989) (footnotes omitted).

3. *Id.* at 811.

convoluted legal question I was having difficulty presenting in a brief. When he had trouble writing through a difficult issue, he said it helped if he moved the issue to the back of his mind and focused instead on some unrelated intellectual concept, theory, or issue. Pondering other subjects helped him better frame the thorny question he had been working through. The collateral subjects rarely appeared in the piece, but he said they sharpened his thinking and improved the writing. Who can argue against the evidence?

III.

Justice Simonett's writing exemplified another lesson: *Show, Don't Tell*. This narrative style is often attributed to Ernest Hemingway, who died five years before young attorney John Simonett wrote the following factual account in a supreme court brief. In it, he attempted to persuade the court that a tenant in a commercial building was not entitled to damages because the tenant had assumed the risk of entering a dark basement, where he fell into a boiler pit:

About 11:15 the morning of January 27, 1965, Leo Coenen, working in his sewing machine shop in the Buckman Hotel building, blew a fuse when he attempted to plug in a machine he was repairing.

....

Mrs. Smith and Mr. Coenen entered the basement at the south end and walked north in the east half, walking in a lane between piled crates and supplies. There were illuminated light bulbs along this lane to show the way.

....

They flashed the flashlight in this room, wherever it was, and finding no fuse box, turned back

. . . Mrs. Smith, followed by Mr. Coenen, eventually entered the middle room. There is one overhead light bulb in the middle, for which there is a drop cord plus a switch at the entrance to the middle room. The two did not try the switch, not seeing it, but Mrs. Smith did try the drop cord. No light went on. They proceeded through another entrance into the boiler room.

Both Mrs. Smith and Mr. Coenen agreed at this point they did not know where in the basement they were. It was pitch black, nothing could be seen without the

flashlight and the place was strange and unfamiliar to them.

On the right hand side of the entrance to the boiler room was a light switch. Mrs. Smith says she tried it with no results. She shined her flashlight into the darkness and spied a drop cord a few steps ahead. She went to it, followed by Mr. Coenen, who also about this time tried the light switch to no avail. Mrs. Smith pulled the drop cord to Light No. 1, with no result. Mr. Coenen pulled it and no result.⁴

The story goes on suspensefully for several paragraphs more, with the two characters crisscrossing in the dark basement from drop cord to switch trying and retrying unsuccessfully to illuminate their way to the fuse box. Eventually, they do find the fuse box, but no light. Then “Mr. Coenen says he first saw the drop cord to Light No. 2. He decided to walk over to it to try the light. He took a couple of steps northwesterly and fell in the boiler pit.”⁵

Notice how the master storyteller put little Mrs. Smith out in the lead with her dim flashlight, followed blindly and closely by Mr. Coenen, followed in turn by the reader. And there we all go, huddling along and feeling our way around in the blackness of this basement, this “strange and unfamiliar” place. The genius is not just in the telling of the story, which creeps about in the damp concrete rooms like any thriller. The genius is the purposefulness of the form of the story. Simonett the storyteller could have given the factual account in any number of ways. But he had a legal point to make. He wanted his primary audience—the justices of the supreme court—to cry out, *You fool! Go back! You can see you’re in danger!* Rather than merely tell them that Coenen knowingly took an unreasonably dangerous risk, he took them right down into the basement with Coenen and showed them.

Twenty-four years later Justice Simonett would remind us that the lawyer “must ‘put his hearers, who are to decide, into the right frame of mind.’”⁶ His facts were stories. And he would often deliver his stories as persuasively as he analyzed legal issues. In doing so, showing rather than telling, he taught us to put the reader in the right frame of mind.

4. Appellant’s Brief at 4, 6–7, *Coenen v. Buckman Bldg. Corp.*, 278 Minn. 193, 153 N.W.2d 329 (1966) (No. 40517) (citation omitted).

5. *Id.* at 9.

6. Simonett, *supra* note 2, at 809 (quoting ARISTOTLE, RHETORIC AND POETICS, bk. 1, ch. 2, at 90 (F. Solmsen ed., 1954)).

IV.

A fourth lesson Justice Simonett's writing teaches is: ***Rely More on Reason than Citation to Authority***. Long before he joined the court, John Simonett amusingly foreshadowed this lesson in his sarcastic comment critical of string citation:

[O]ne case should never be cited when six will do. Legal scholars have long discredited the phrase "weight of authority" as being meaningless, but great persuasive powers are still mystically attributed to "length of authority." This is based on the observation that while it does not pay to beat a dead horse, it is nevertheless quite an impressive sight to lay out a line of dead horses end to end.⁷

Thirty years later he would complain, "The law library shelves are more . . . full now [than they were for the early American lawyer], and as a consequence, forensic rhetoric has become more legalistic, relying more on the weight or bulk of legal authority and less on first principles and general reasoning."⁸ His legal writing exemplifies the approach he advocated, with far more reliance on reasoning than citation. Although his opinions occasionally do include string citation, the observer will notice that he used string citation on fewer occasions than most other justices and judges, and that he did so primarily when necessary for the point being made. He was much more likely to rely on rhetorical appeal to logic, trusting the reader's capacity to reason sensibly instead of demanding that the reader accept a point primarily because it has been made before.

V.

Some have complained that legal writing tends to be cold, vapid, and uninteresting.⁹ They were not reading the work of John

7. John E. Simonett, *The Footnote as Excursion and Diversion*, 55 A.B.A.J. 1141, 1141 n.1 (1969).

8. Simonett, *supra* note 2, at 812.

9. See, e.g., Mark P. Painter, *The Elements of Legal Style*, 10 J. APP. PRAC. & PROCESS 389, 390 (2009) (book review) ("[W]e come out of law school writing like lawyers and judges always have. Badly."); Mark P. Painter, *Legal Writing 201: 30 Tips to Improve Readability in Briefs and Legal Documents or, How to Write for Judges, Not like Judges*, MONT. LAW., Apr. 2006, at 6, 6 ("Most legal writing is atrocious. Fred Rodell, dean of Yale Law School before most of us were born, had it right when he said, 'There are two things wrong with most legal writing. One is style. The other is content.'") (quoting Fred Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38, 38

Simonett. As comfortable on stage as he was in the courtroom (on either side of the bench), the orator, thespian, lawyer, and justice also demonstrated the most entertaining lesson: *Be Expressive*. Although judicial decorum restrained him when drafting court opinions, he freely animated his other legal writing in creative, captivating flair. It takes considerable confidence to avoid being ordinary and considerable skill to avoid being sensational; he had both.

A favorite example of creative expressiveness is Justice Simonett's introduction of the *William Mitchell Law Review's* symposium on the Minnesota Constitution, which began with eloquent imagery: "In the last fifteen years, our state constitution has found itself the object of considerable attention. No longer the shy wallflower, by itself, alone at the edge of the dance floor, it now finds itself courted, never at a loss for admiring partners, dancing every dance."¹⁰

The personification, symbolism, and rhythm of this short paragraph not only draw the reader along eagerly into the more abstract text to follow, they perfectly capture the essence of the central topic and set a comforting and inviting tone for the entire publication. Or consider this earlier intentionally exaggerated comparison between art and litigation: "Both stage and courtroom contain the stuff of drama: fleeting inattention and then the maimed body, both irrevocable; the search for truth midst conflicting claims; lives of quiet desperation no longer quiet but much more desperate; the lure of money, sex, love, violence and ambition."¹¹

Here, John Simonett, who avoided the danger of sensationalizing his dramatic storylines with unintended melodrama, included this melodramatic description purposefully and aptly to emphasize the similarity between theatrical entertainment and judicial reality. Or consider this clever twist to a somewhat common biblical reference:

There appear to be no clear criteria for which constitution to apply and, if both, in what order. At times a little chutzpa asserts itself, as when the Vermont

(1936)).

10. John E. Simonett, *An Introduction to Essays on the Minnesota Constitution*, 20 WM. MITCHELL L. REV. 227, 227 (1994).

11. John E. Simonett, *The Trial as One of the Performing Arts*, 52 A.B.A. J. 1145, 1145 (1966).

Supreme Court quoted with approval the assertion that the state constitution “is our birthright, which we have sold for a bowl of federal porridge.”¹²

Most readers would not catch the witty link between “chutzpah”—the Yiddish variation of the Hebrew term meaning “audacious”—and the Genesis account of Jacob, father to all Hebrews, who audaciously convinced Esau to sell him his birthright.¹³ Justice Simonett nonetheless included the Hebraic reference, subtly one-upping the Vermont court’s clever but ordinary cultural reference. Now *that’s* chutzpah.

We see not just wit but, more often, deeper meaning in Justice Simonett’s creativity. He could expressively frame a question in a manner that revealed its profound nature. Take, for example, his recasting of the usual questions about the supposed personhood of corporations into these more intriguing questions: “Put another way: Can a corporation commit sin? Can a corporation be guilty of pride, covetousness, lust? Of anger, gluttony, envy, and sloth? Can Calvin Klein, Inc. have lust in its heart? Or are such passions limited to Calvin Klein?”¹⁴

Using his penchant for visual storytelling, Justice Simonett frequently included metaphors with memorable descriptions that would far outlast the abstract text that they supported. Consider this one, in an essay critical of the overcomplication of cases (what he called “litigation obesity”) by lawyers endlessly questioning witnesses over minutia: “Much discovery today, however, is like panning for gold in Minnehaha Creek. There is no gold in Minnehaha Creek. Yet saucer after saucer of sediment is sloshed about in a vain search for a grain of evidence, the thoroughness of the sloshing presumably compensating for its futility.”¹⁵

Who would have imagined that the annoying Lilliputian quibbling of attorneys could be described so delightfully? Or consider this imagery from a theoretical essay lauding the power of morality-shaping theological principals by comparison to the limited power and purpose of law:

We forget, I think—especially in civil practice—that law at

12. Simonett, *supra* note 10, at 235 (quoting *State v. Jewett*, 500 A.2d 233, 235 (Vt. 1985)).

13. *Genesis* 25:27–34.

14. John E. Simonett, *A Corporation’s Soul*, BENCH & B. MINN., Sept. 1997, at 34, 34.

15. John E. Simonett, *The Growing Irrelevance of Relevance*, BENCH & B. MINN., Aug. 1992, at 11, 12.

bottom depends on force and coercion. In a sense, might does make right; or to put it another way, even the right needs to be enforced with might. Law is the velvet glove over the iron fist of force.¹⁶

A discussion of Justice Simonett's expressiveness must particularly acknowledge his sense of humor. Here, we can look to one of his earliest writings. Borrowing unashamedly, and no doubt fondly, from Mark Twain's technique of relying on some older, eccentric narrator to introduce an incredible yarn interwoven either with satirical social commentary or anthropological insight, about 100 years after Twain wrote *The Celebrated Jumping Frog of Calaveras County*, John Simonett wrote *The Common Law of Morrison County*. (One cannot help imagining that, but for the barrier of time, the two storytelling writers would have been pen pals, if not sure friends.) Just as Twain had expressively built his comedic narrative about Calaveras County on the odd recollections of "good-natured, garrulous old Simon Wheeler,"¹⁷ John Simonett began his comedic Morrison County observations this way:

"There are three great branches of the law," the senior member of the Bar told me when I first arrived at the county seat. I listened respectfully, but also somewhat skeptically, as befitted a man fresh out of law school. He then elaborated: "First, there is the statutory law, the law enacted by the legislature, found in the codes and statute books; second, there is the common law, the law handed down in court decisions since before the days of Coke and found in the reported court cases; and finally, and most important, there is the common law of Morrison County."¹⁸

I am certain that Justice Simonett would have included a qualified warning about expressive writing. An important element of the lesson, *be expressive*, is to carefully distinguish the type and degree of expressiveness that persuades from the type and degree of expressiveness that offends. One examining his work soon notices that Justice Simonett's judicial opinions, though often more

16. John E. Simonett, *Meditation on the Limits of Law*, 2 J.L. & RELIGION 1, 1 (1984) (adding on reflection, "Law, then, is more than a velvet glove; it does more than cushion the blow of force.").

17. MARK TWAIN, *The Celebrated Jumping Frog of Calaveras County, in The CELEBRATED JUMPING FROG OF CALAVERAS COUNTY, AND OTHER SKETCHES* 7, 7 (Shelley Fisher Fishkin ed., Oxford Univ. Press 1996) (1867).

18. John E. Simonett, *The Common Law of Morrison County*, 49 A.B.A. J. 263, 263 (1963).

expressive than others', are not nearly as daring as his other writing. He implicitly demonstrated, for the most part, his agreement with this caveat:

Judges may face a dilemma in trying to write opinions that are figurative, quotable, humorous, or unique. While they may want to forsake the wooden form of judicial opinion writing (issue, facts, law, application, conclusion), they must, in some way, maintain the dignity and integrity that, at least in part, gives the judiciary its legitimacy.¹⁹

But we know he did not absolutely oppose all humor in judicial opinions. When he disclosed that "[t]he justice assigned to write the opinion" in *Durfee v. Rod Baxter Imports, Inc.*,²⁰ which concerned the breach of warranty in the purchase of a Saab car, originally drafted the opinion to begin, "This is a Saab Story," Justice Simonett declared his "regret" that the authoring justice "was prevailed upon to delete [that] sentence from his final draft."²¹ Despite this regret, and despite the expressive richness of his other prose, Justice Simonett wrote his opinions in a manner universally recognized as enhancing the dignity and integrity of the court. We must conclude from his example that he would say that judges should be somewhat expressive with careful restraint in judicial writing, that lawyers should be less restrained in expressiveness in brief writing, and that commentators should be least restrained when writing essays and articles in academic journals. In any setting, a writer following John Simonett's expressive path will press the limits after measuring the value of creativity against the expectations and sensitivities of the audience and the demands of the forum.

VI.

The last lesson to mention is inspired by the others: *Hone the Craft*. John Simonett continually studied the craft of writing. He always enjoyed reading about and frequently discussing the qualities of good English prose. He was sometimes annoyed and sometimes amused by the grammatical blunders of others and

19. Adalberto Jordan, *Imagery, Humor, and the Judicial Opinion*, 41 U. MIAMI L. REV. 693, 695 n.11 (1987).

20. 262 N.W.2d 349 (Minn. 1977).

21. John E. Simonett, *Juris-Jocular . . .*, BENCH & B. MINN., Aug. 1989, at 27, 27 (reviewing RONALD L. BROWN, *JURIS-JOCULAR: AN ANTHOLOGY OF MODERN AMERICAN LEGAL HUMOR* (1989)).

worked hard to avoid committing them himself. He appreciated good works of literature not merely for their substance but also for their style. And we know that he incorporated what he learned to enhance his own vocabulary, punctuation, and syntax. Any writer can similarly improve his or her own writing by incorporating emphasis-enhancing grammatical techniques of others, like the techniques that Justice Simonett used most frequently. We will look at three of them.

One emphasis-enhancing technique that Simonett employed is punch-line syntax. Mirroring skills he demonstrated as a captivating orator, his writing set up mini-cliffhangers, holding his readers' attention until the end when he would deliver the most significant sentence, phrase, or word. He left many examples. One was his call for attorneys to respect time limits. He could have made the warning in various other ways, but none so compelling as his two-sentence, punch-line arrangement that resulted in a witty, forceful, and unforgettable aphorism: "[T]he lawyer lives and dies by the deadline. This is why it is called a deadline."²² In another example, an opening sentence of an essay comparing litigation and theater, he foreshadows his thesis with three substantive and stylistic parallels and saves the operative comparative conclusion for the very last word, preceded by a comma-induced, emphatic pause: "All the world's a stage—and not least the courtroom—and all the men and women merely players, so there is a certain logic that finds the performance of a play and the trial of a lawsuit, the playwright's art and the lawyer's, similar."²³ He used the same punch-line technique in judicial opinions, such as when he delayed the verb phrase in this passive sentence until the end, gently cautioning lawyers how to avoid trouble in service of process, saying, "We might add that prudence would seem to dictate that restricted certified mail, which includes an endorsement on the envelope to 'deliver to addressee only,' be used."²⁴ Justice Simonett did not overuse punch-line syntax, but he used it liberally, and a persuasive legal writer should not underestimate its value.

Justice Simonett also relied occasionally on appositives for mid-sentence emphasis. As a reminder from grammar class, an appositive is an explanatory or defining noun or noun phrase that

22. John E. Simonett, *Rules for Practice in General*, BENCH & B. MINN., July 1994, at 30, 30.

23. Simonett, *supra* note 11, at 1145.

24. *Stonewall Ins. Co. v. Horak*, 325 N.W.2d 134, 136 (Minn. 1982).

immediately follows another noun and that, because it is offset by commas, naturally emphasizes the interjected explanation or definition. In Justice Simonett's case, the technique has the added benefit of informal flavor, advancing the country-lawyer tone that he preferred. For instance, "Horak, a minor at the time of the accident, had illegally purchased liquor from the store and then furnished it to another minor who drove a car and was injured."²⁵ He doubles the effect here when he follows the appositive phrase with a second one to modify the first: "My friend, a retired professional person, not a lawyer, had been closely following the breaking news on CNN."²⁶ And here, in a single sentence he uses the appositive and later adds another of his favorite techniques, the parenthetical interrupter: "Robert Taylor parked his uninsured car near the home of his former girlfriend, Twaya McIntosh. When McIntosh came out of the house, she got into her own car, a Dodge automobile, accompanied by a male companion and her 6-month-old son (whose father is Taylor)."²⁷

Fitting Justice Simonett's conversational approach, he frequently inserted a parenthetical word or phrase, or even a full parenthetical sentence, to add incidental detail or emphasis. Here, for example: "He then pulled alongside the passenger side of the Dodge and fired a shot that shattered the window glass, missing the male passenger (who ducked), but striking McIntosh in the head."²⁸ And here he interjects a rhetorically persuasive full question that pulls the reader along through the rest of the sentence: "Titus took with him (how could he not?) his experience and skills acquired while working for Jostens."²⁹ Justice Simonett did not reserve this technique for fact presentations. Here, for instance, he interposes a parenthetical phrase to emphasize a point about the district court's fact finding as it bears on the scope of appellate review: "Arguably, the trial court's conclusions of law on damages are not sustainable under its findings of fact (there being no findings on common law damages), so that the damages issue is preserved here for our review, even though this is only an appeal

25. *Id.* at 135.

26. John E. Simonett, *Rules of Statutory Construction and the Florida Election Law*, BENCH & B. MINN., July 2001, at 31, 31.

27. *McIntosh v. State Farm Mut. Auto. Ins. Co.*, 488 N.W.2d 476, 476-77 (Minn. 1992).

28. *Id.* at 477.

29. *Jostens, Inc. v. Nat'l Computer Sys., Inc.*, 318 N.W.2d 691, 701 (Minn. 1982).

from a judgment.”³⁰ And finally, here, two back-to-back interjections provide emphatic examples to support his questioning of the influence of rhetoric over truth: “The verdict, it is said, announces the truth of this courtroom enterprise. But how can this be? Facts are kept from the jury either by counsel coaching the witness (‘don’t volunteer anything’) or by the judge ruling on evidence (‘objection sustained’).”³¹

These examples scratch the surface. The careful observer will learn much more from studying the stylistic features of John Simonett’s writing. And by following his lesson and example of honing the craft of writing, the Simonett student will borrow from him, and from other writers, those features that come closest to paralleling one’s own authentic voice.

CONCLUSION

Justice John Simonett’s contribution to the substance and practice of law in Minnesota would never have been as great as is rightly asserted in this Tribute’s other essays were it not for his remarkable giftedness as a writer. The exceptional substance and style of his writing have earned the recognition and praise that it continues to provoke. Although he would value our enduring praise, he would be more honored if we continue to explore his nearly 425 judicial opinions and 16 essays and articles to discover the lessons that will improve our own writing. And if I have correctly declared that we can virtually hear his voice as we read his work, I don’t think it’s too much of a stretch also to suggest that, if we listen closely, we will hear him urging us to do just that.

30. Tyroll v. Private Label Chems., Inc., 505 N.W.2d 54, 58 n.3 (Minn. 1993).

31. Simonett, *supra* note 2, at 807.