

APPELLATE ADVOCACY IN THE DIGITAL AGE



Eric J. Magnuson

ROBINS / KAPLAN LLP



Damien A. Riehl



Great Briefs and Winning Briefs

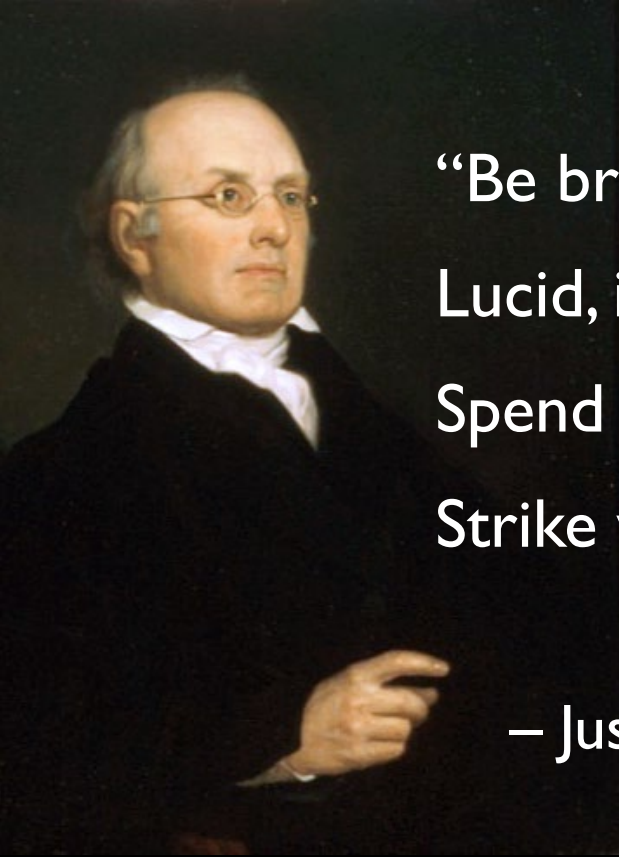
Great briefs may merit a frame and a picture hook or a place on the shelf bound in vellum. The author of a great brief can show it to colleagues, confident that word of the masterpiece will make its way throughout the firm. Lawyers who see the great brief will scramble to make copies for their personal files. The manager of the firm's brief bank will be delighted by the great brief, knowing that here at last is a submission worthy of retention, perusal and awe.

Great Briefs and Winning Briefs

Winning briefs are not great briefs. This does not mean that they are bad briefs. Winning briefs are not illiterate, incomprehensible, or filled with typographical errors. But winning briefs also are not suitable for binding and adding to a Great Books collection. Winning briefs are puny things—not comprehensive but focused. A judge can carry one home in a coat pocket.

Hermann and Jenks, *Great Briefs and Winning Briefs*,
Litig., Summer 1993

“Advice to an Advocate”



“Be brief, be pointed; let your matter stand
Lucid, in order, solid, and at hand;
Spend not your words on trifles, but condense;
Strike with mass of thoughts, not drops of sense[.]”

– Justice Joseph Story (1779–1845)

Advocacy and the King's English

Tell a story (as humankind has for millennia)



Photo credit:
Martin Lewison

Not everyone is Shakespeare, but everyone can follow the basic rules of good writing

You don't want to be this guy:

7th Circ. Sets Fee Penalty For Atty Who Filed 'Monstrosity', Law360 (January 22, 2020)

https://www.docketalarm.com/cases/US_Court_of_Appeals_Seventh_Circuit/18-3206/Edith_McCurry_v._Kenco_Logistic_Services_LLC_et_al/48/

Better Brief Writing

(which also helps people who read on screens)

Bibliography

- General Writing, Grammar, and Word Usage
- Brief Writing
- Typography

Some Random Tips for Writing Better Blog Posts



By [Bob Ambrogi](#) on December 13, 2019

ROBERT J. AMBROGI



Is a Massachusetts lawyer, writer and media consultant. He also writes the blog [Media Law and](#) hosts the legal affairs podcast

Write Like a Blogger

Begin with a bang
(Be catchy in your lede)

Don't bury the lede

Consider using a style guide

Write Like a Blogger

Face it – you have a capitalization problem

Eric Magnuson and Lisa L. Beane, *Briefly: How Not to Yell at the Court* (Feb. 18,

2019) <http://legalnews.com/detroit/1470707>

- Minnesota Lawyer
- Detroit Legal News

Write Like a Blogger

Use visual cues

Keep sentences and paragraphs short

Footnotes?

“Having to read footnotes resembles having to go downstairs to answer the door while in the midst of making love.” - Noël Coward

Write Like a Blogger

Repetition vs. Redundancy

Consider using editing tools

WordRake

PerfectIt

10 Tips for Better Writing (especially in the age of screen reading)

- Rethink font style
- Increase font size
- Increase side margins
- Reduce footnotes
- Create extra white space
- Use headings and sub-headings
- Use bullets and lists
- Be short
- Use graphics
- Follow the rules



BUDGET



How courts are dealing with it



Efficiency

Straight Ahead



THE LEAP FROM E-FILING TO E-BRIEFING

Recommendations and Options for Appellate Courts to
Improve the Functionality and Readability of E-Briefs



2017

ABA: E-brief Functionality

Introduction: The evolution from e-filing to e-briefing.....	Chapter 6: Hyperlinks to legal authorities, record materials, and the Internet.....
Chapter 1: Tablets and annotation software	External versus internal hyperlinks
Chapter 2: <i>Pro se</i> litigants	Hyperlinking of legal and record citations by the court.....
Exceptions for <i>pro se</i> litigants	Hyperlinking of legal citations by filers.....
Chapter 3: File formatting.....	Hyperlinking of record citations by filers
Searchable PDF (official court record)	Hyperlinking to the Internet by filers.....
Non-fixed format file (optional secondary filing).....	Hyperlinks in the “brief of record”
Visual images embedded in briefs.....	Chapter 7: Best practices for implementation.....
Chapter 4: Readability.....	Rulemaking
Word limits versus page limits.....	Interim rules, administrative orders, and public announcements .
Text density (line spacing, margins, and alignment) ..	Phased introduction.....
Font and font size.....	Training and Education.....
Emphasis.....	Appendix: Key authorities and additional resources
Chapter 5: Internal navigation.....	
Page or paragraph numbering	
Bookmarks and internal hyperlinks	



**CLERK OF COURT
UNITED STATES COURT OF
APPEALS FOR THE FIFTH
CIRCUIT**

5th CIRCUIT CM/ECF FILING INITIATIVES

Electronic Record on Appeal (EROA)

Brief Templates

Electronic Filer Document Check

Automatic Compliance Review at Docketing

ELECTRONIC RECORD



- Bar Renewal
- Bar History Report
- File Case Originating Documents with Fee
- File Case Originating Documents w/o Fee
- Request Documents
- Electronic Record on Appeal**

Official

ina System

This facility is for Official Court Business only. Federal Rule of Appellate Procedure, Rule 25, enforcement officials under 18USC152 and 38

Welcome

Welcome to the U.S. Court of Appeals Case Management/Electronic

Last Login Wed Sep 25 16:

[Court Information](#)

If you are an attorney or pro se granted electronic filing privileges in c deadlines for your cases. You can sort this information by case number the hyperlink under the "File Event" tab. If you prefer to not see the deadlines" box.

Show Pending Deadlines

Pending Deadlines/Filings

No pending deadlines/filings.

Electronic Records Available for Download

Case Number	Short Title	Date Accepted
19-50770	USA v. Adriana Montes-De Oca	August 29, 2019
19-50746	USA v. Jerry Urbina	September 23, 2019
19-50745	USA v. Armando Perez-Gavaldon	September 13, 2019
19-50741	USA v. Orbie Chambliss	September 13, 2019
19-50731	USA v. Inocente Barraza-Olivera	September 05, 2019
19-50728	USA v. Servando Parra-Murillo	September 10, 2019
19-50726	USA v. Edwin Sanchez-Toro	September 10, 2019
19-50725	USA v. Modesto Gonzalez, III	September 06, 2019
19-50724	USA v. Juan Pedroza-Romero	September 10, 2019
19-50718	USA v. Oscar Valadez	September 17, 2019
19-50708	USA v. Julio Quinteros-Retana	August 21, 2019
19-50707	USA v. Oscar Campos-Lagunas	September 19, 2019
19-50706	USA v. Antonio Cruz-Ramos	August 21, 2019
19-50704	USA v. James Rose, III	September 11, 2019
19-50687	USA v. Horacio Santamaria, Jr.	September 24, 2019
19-50685	USA v. Elmer Morales-Sanchez	September 04, 2019
19-50683	USA v. Raymond Mendoza	September 19, 2019
19-50678	USA v. Oscar Banda	September 09, 2019

BRIEF TEMPLATES



- Bar Renewal
- Bar History Report
- File Case Originating Documents with Fee
- File Case Originating Documents w/o Fee
- Request Documents
- Electronic Record on Appeal
- Brief Template**

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If you are an attorney or pro se granted electronic filing privileges in our Court for your cases. You can sort this information by case number, item due, or hyperlink under the "File Event" tab. If you prefer to not see the deadlines, click the "Deadlines" box.

Show Pending Deadlines

Pending Deadlines/Filings

No pending deadlines/filings.

Brief Templates Available for Download

Case Number	Short Title	Type	Date Created
19-50893	USA v. Victoria Perkins	Appellee Brief	September 27, 2019
19-50891	USA v. William Dubin	Appellee Brief	September 27, 2019
19-50890	USA v. Omar Rosales-Hernandez	Appellee Brief	September 26, 2019
19-50886	USA v. Isaac Tejada	Appellee Brief	September 26, 2019
19-50885	USA v. David McDaniel	Appellee Brief	September 25, 2019
19-50883	USA v. Jose Cabrera-Castro	Appellee Brief	September 25, 2019
19-50882	USA v. Francisco Nunez	Appellee Brief	September 25, 2019
19-50881	USA v. Jared Roark	Appellee Brief	September 25, 2019
19-50879	USA v. Juan Delgado-Ramirez	Appellee Brief	September 24, 2019
19-50876	USA v. Nahum Ramirez	Appellee Brief	September 24, 2019
19-50869	USA v. Cesar Carrera	Appellee Brief	September 20, 2019
19-50867	USA v. Lamar Moore	Appellee Brief	September 20, 2019
19-50866	USA v. Richard Gamez	Appellee Brief	September 24, 2019
19-50863	USA v. Esmeralda Vidales	Appellee Brief	September 18, 2019
19-50862	USA v. Orlando Perez-Trejo	Appellee Brief	September 26, 2019

BRIEF TEMPLATES

No. 19-50893

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

VICTORIA PERKINS,

Defendant - Appellant

On Appeal from

United States District Court for the Western District of Texas
7:19-CR-3-3

BRIEF OF APPELLEE United States of America

SUBMITTED BY:

Joseph H. Gay
U.S. Attorney's Office
601 N.W. Loop 410
San Antonio, TX 78216-5512

CERTIFICATE OF INTERESTED PERSONS

Designated counsel of record certifies that the following listed persons and
as described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an
in the outcome of this case. These representations are made in order that the
of this court may evaluate possible disqualification or recusal.

Counsel for Appellees:	Counsel for Appellees:
United States of America	Joseph Gay of U.S. Attorney's Office San Antonio, TX

Counsel for Appellants:	Counsel for Appellants:
Victoria Perkins	David Rogers of Everscoat & Rogers, P.L.L.C. Midland, TX

Interested Parties:	Counsel for Interested Parties:
Type Here	Type Here

S/John Doe
Attorney of record for Type Here

AL STATEMENT

If you chose to not include this, delete the
> a full recreate of the table of contents.)
APP. P. 28(a)(4)(A) through (D))

OF THE ISSUES

If you chose to not include this, delete the
> a full recreate of the table of contents.)
w (see FED. R. APP. P. 28(a)(5))

OF THE CASE

If you chose to not include this, delete the
> a full recreate of the table of contents.)
P. P. 28(a)(6))

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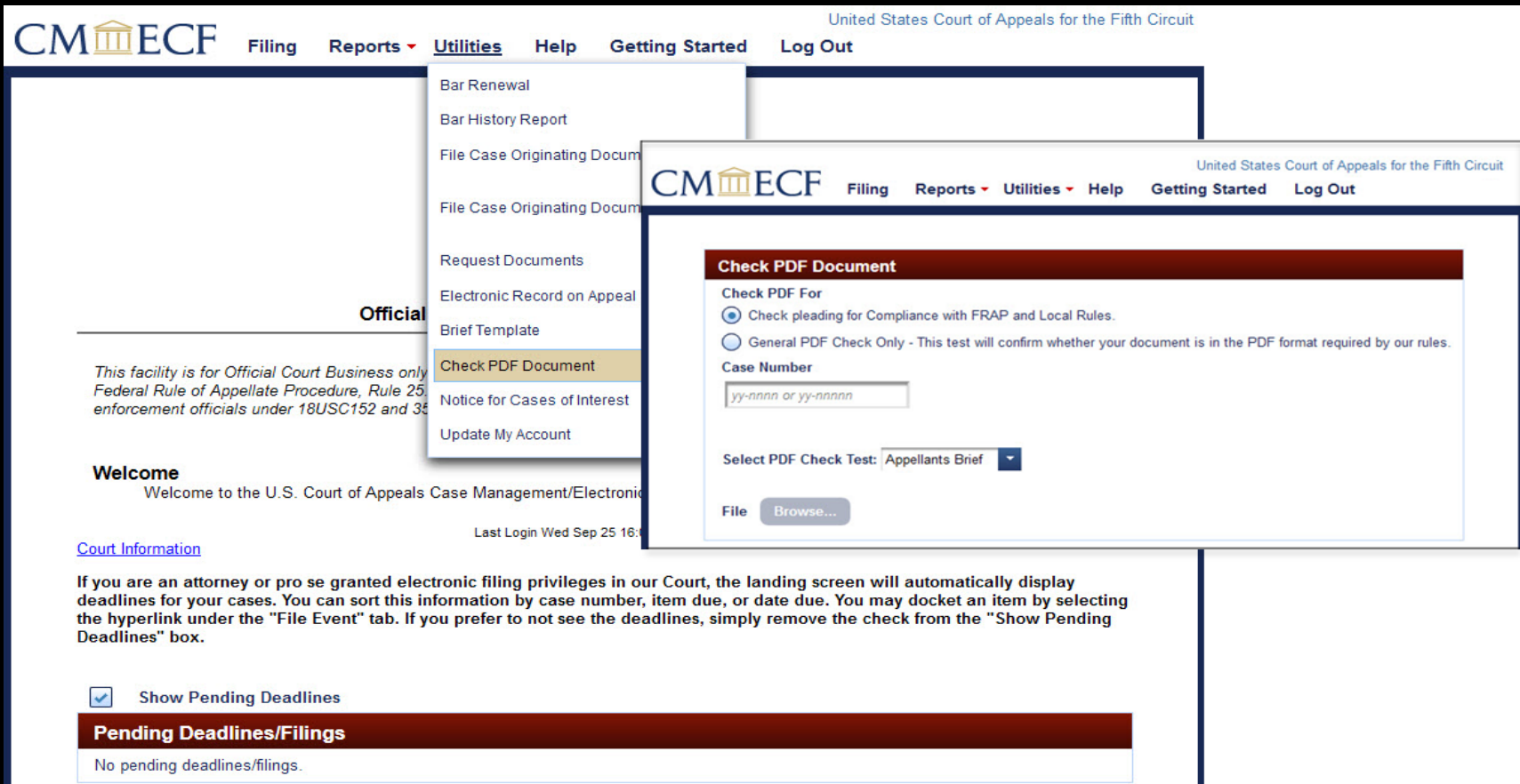
The foregoing document was forwarded via U.S.
g parties/counsel:

ES

S/John Doe

required by FED. R. APP. P. 25

CHECK PDF DOCUMENT



United States Court of Appeals for the Fifth Circuit

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Show Pending Deadlines

Pending Deadlines/Filings
No pending deadlines/filings.

United States Court of Appeals for the Fifth Circuit

CM ECF Filing Reports Utilities Help Getting Started Log Out

Check PDF Document

Check PDF For

Check pleading for Compliance with FRAP and Local Rules.
 General PDF Check Only - This test will confirm whether your document is in the PDF format required by our rules.

Case Number

Select PDF Check Test: Appellants Brief

File

IMMEDIATE NOTICE OF POSSIBLE ERRORS

The screenshot shows the CM/ECF web interface. At the top, there is a navigation bar with the CM/ECF logo and links for Filing, Reports, Utilities, Help, Getting Started, and Log Out. Below the navigation bar, there is a sidebar on the left with sections for 'Attention', 'Upload Documents', and 'Attention'. The main content area displays a 'Document Check Result' for a document titled 'Appellant/Petitioner Brief Filed'. The result includes a reminder about scanned PDFs, a list of instructions for uploading documents, and a detailed list of deficiencies identified by the QC program. The deficiencies include issues with the title page, originating court information, citation format, and event selection. At the bottom of the page, there are 'Print' and 'Done' buttons.

CM/ECF Filing Reports ▾ Utilities ▾ Help Getting Started Log Out

Attention

Reminder: Briefs scanned into PDF are not acceptable. (See 5th Cir. R. 31.1). Please do not load a scanned brief.

- Click the 'Browse' button to locate and upload the PDF file.
- To be sure you are selecting the intended document, view the file by selecting it under the document column.
- If applicable, enter a description and click 'Browse' again to attach additional documents.

Upload Documents

Description

Appellant/Petitioner Brief Filed

Browse...

Attention

Do not select the 'REDA' and instructed by the cou

If filing a REDACTED copy, sele

Document Check Result

We have performed a courtesy check of this brief to identify issues that might require the Clerk's Office to reject the pleading, using a locally developed Quality Control (QC) computer program. Please review the following matters identified as potential deficiencies. We recommend you correct any deficiencies before you file the document, as that will likely avoid the need for you to file a corrected pleading later. If you need time to make the corrections, you may request up to a three-day extension to make the changes. The program very accurately identifies deficiencies for most of the matters it checks, but can mistakenly suggest a deficiency exists. This most commonly occurs when the program does not find the exact or close match for required contents or sections, or when nearby text or characters confuse the search engine. If you believe the program incorrectly identified a deficiency, continue with docketing. In that case, however, please inform us of the discrepancy, so we can review the issue and improve the program's accuracy. Provide that information, and any other observations or recommendations you have, by email to the following address: Margaret_Dufour@ca5.uscourts.gov.

PLEASE NOTE: Deputy clerks will review the QC program's findings when they perform their quality control review of this pleading. In all cases, a deputy clerk, not the program, determines when it is necessary to reject a pleading.

If you are filing on the deadline and need additional time to correct this filing, you could qualify for an automatic extension of three working days, unless your case has a special briefing requirement. To determine if this extension is available in your case, click on the 'File Extension' button displayed at the bottom of the screen and docket the extension. If the automatic extension is not available, you will be returned to docketing.

1. The title page must contain the number of the case centered at the top. See FED. R. APP. P. 32(a)(2)(A).
2. The name of the **Originating Court, Agency, or Board** does not appear or is incorrect on the title page of the brief. See the redline below for the changes required:
UNITED STATES DISTRICT COURT FOR THE **NORTHEASTERN** DISTRICT OF **TEXAS,LOUISIANA**. See FED. R. APP. P. 32(a)(2)(D).
3. The use of the ROA record citation format is **ONLY** allowed in cases wherein an electronic record has been filed. A paper/physical record was filed in this case, therefore, use of the ROA citation format is unacceptable. This Court does not provide a standard format for citing to a paper/physical record. Counsel must remove all ROA citations from the brief, and replace the citations with a format devised by counsel. It is suggested that counsel create record citations that are concise and consistent throughout the brief by using either the document name, document number, page number in document, filed date, and/or any other identifiable information available. The record citations must be in the correct form or the brief will be rejected. See FED. R. APP. P. 28(e) and 5th Cir. R. 28.2.2. See [Form 1](#) for examples of record on appeal citations.
4. The program could not find a deadline for the event selected for this filer. If you are certain there is a deadline for the document being filed, you may have selected an incorrect event. Please verify the correct event has been selected.

For future reference, we provide two services that may help attorneys avoid deficient briefs. First, we offer [brief templates](#) in Microsoft Word formatted to comply with court rules, customized for the case and type of brief due. Second, we permit attorneys to check a brief for compliance with FRAP and local rules using our quality control program before they docket the brief. To use these features, log in to CM/ECF and from the Utilities menu, select either 'Brief Template' (Counsel Only) or 'PDF Check Document'.

Print Done

Hyperlinks to Other Resources

Cites to:

- The record
- Case law
- Statutes
- Appendices
- Other matter documents (E-filing URLs)
- Items to which courts may give judicial notice

Automated Tools

Cloud Linking

Fastcase Cloud Linking is a free tool that finds citations to cases in your PDF or Word document, creates public hyperlinks to them, and returns the document (with links) to you as a download. Now you can automatically create hyperlinks in briefs, issue alerts, or client memos, preserving all of your existing formatting, but simply adding hyperlinks to cases.

Drag and drop on this box

or

Choose file

Type keyword, natural language

Current Sources: ✕ ☆ ✎

Search

Browse



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History & Favorites

Docket Alarm

Fastcase Blog

> The Florida Bar and Fastcase continue to expand partnership

Today (December 9, 2019), Legal publisher Fastcase and The Florida Bar announce an expansion to the current member benefit offering originally only available to Family Law Members. Members of Tax Law, Labor & Employment, Criminal Law, Real Property and Business Law will now all be able to subsc...

SEE MORE...

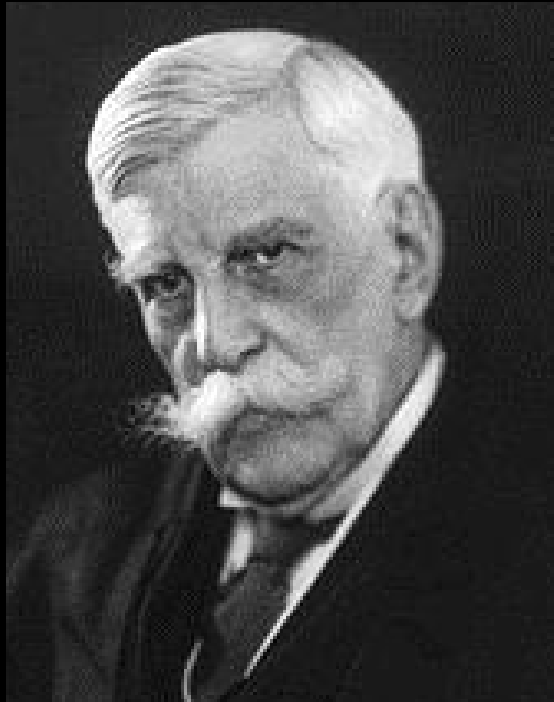
Screen Writing for Screen Reading



Not superficial;
this is advocacy



Of course.
Substance is essential.



... but presentation matters.



Dressing for Court



Speaking to Courts



Writing for Courts

Case 3:04-cv-05348-RBL Document 100 Filed 07/12/2006 Page 1 of 2

1 United States District Court
2 Western District of Washington

3 George C. Swinger, Jr.,
4 Plaintiff,

5 v.
6 Michael B. Cole, et al.,
7 DBFondants.

No. 04-5348RBL

Notice of Appeal

8 I hereby am informing you that I
9 am appealing the asshole Ronald B. Leighton's
10 decision in this matter.

11 you have been hereby served Notice,
12 you're not getting away with this shit that
13 easy.

14 signed this 10th day of July 2006

15
16 George C. Swinger Jr
17 Plaintiff / pro se



No. 10-402

In The
Supreme Court of the United States

TUCK-IT-AWAY, INC., et al.,

Petitioners,

v.

NEW YORK STATE URBAN DEVELOPMENT
CORPORATION, db/a EMPIRE STATE
DEVELOPMENT CORPORATION,

Respondent.

On Petition For A Writ Of Certiorari
To The Court Of Appeals Of New York

BRIEF OF AMICUS CURIAE NEW YORK
STATE SENATOR BILL PERKINS IN
SUPPORT OF PETITIONERS

DENISE OUTRAM*
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Albany, NY 12208
518-472-5849
alavine@albanylaw.edu

*Counsel of Record

Counsel for Amicus Curiae

Lemonade Stand
50 cents

In the
Supreme Court of the United States

OCTOBER TERM, 2014

DOE, ET. AL,

Petitioners,

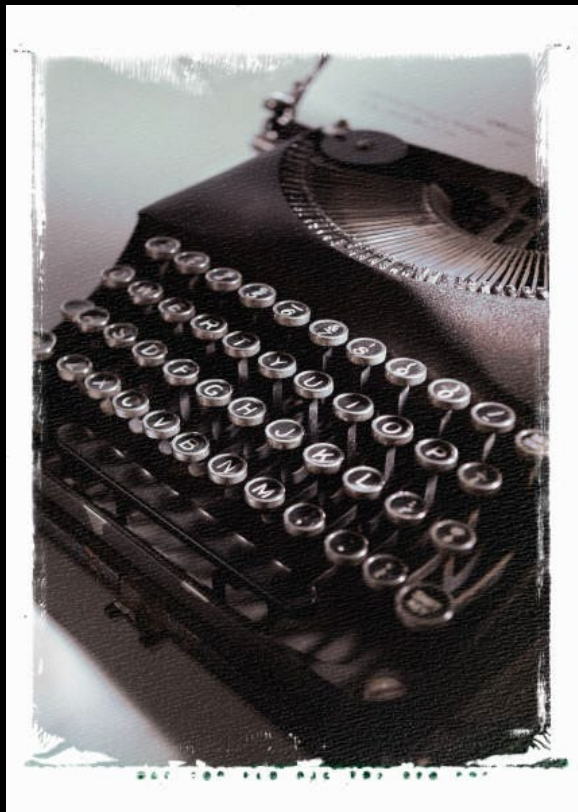
vs.

FLORIDA,

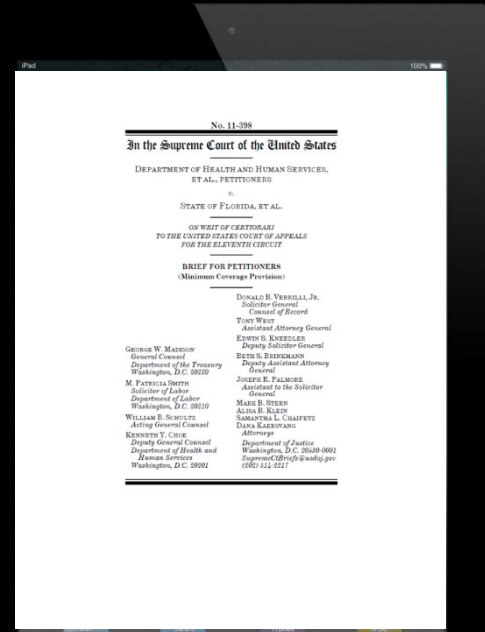
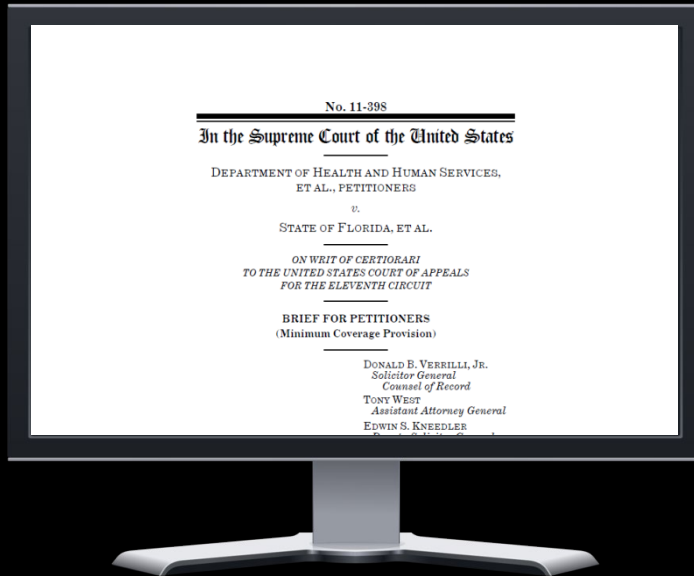
Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF FLORIDA

Writing for **paper**



Writing for screens



Mid-Century Workflow

News Service Review
24 March 1960

Tonight we commence the final 8-week stretch of our current program, ~~which~~ a stretch replete with lectures, festivals, & special events. In fact, there are so many of these that it takes a certain amount of real concentration to keep track of them. During the next three weeks we are commemorating Poe's 150th Birthday, and primarily we are looking at three aspects of 19th century problems in music. The first week we shall give our special Easter concert - The St. Ann Mass of Beethoven. The Bonn tradition comes to a complete end. Long Shellen Festival will be the instrumental performance of Das Lied von der Glocke. The 6th & 7th weeks are devoted to music for the Deaf - both at 4 & 5 pm, respectively. But the final 8th week will have a special program appropriate to our last performance concert in Carnegie Hall - unless some miracle occurs before that time. (That's why we're keeping the program a mystery for the present.)

In addition we have two special Review Festival concerts: one on April 4th with those 1000s of records & one on May 15th - The Beethoven 9th Symphony. Today we're in town for a television from people's programs on this coming Saturday, a musical instrument, & the other on April 23rd, which will present Aaron Copland's high school opera, The Second Hurricane.

If you have a chance to be on the line, we encourage it for you.



1980s Workflow

Theresa Sore, Prisoner
24 March 1960

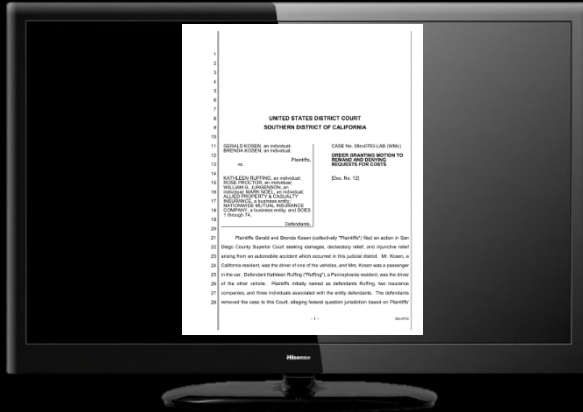
Tonight we commence the final 8-week stretch of our current program, ~~which~~ ^{is} a stretch replete with cycles, festivals, & special events. In fact, there are so many of these that it takes a certain amount of real concentration to keep track of them. During the next three weeks we are commemorating Pagan's 250th Birthday, and simultaneously we are looking at three aspects of 20th century problems in music. The four weeks we shall give our special Easter concert - The Shuman Mass of Peter Dinkov. The Bonn Bach then comes to complete our Long Shabbat Festival with his immortal performance of Das heid von der Erde. The 6th & 7th weeks are devoted to music for the Deaf - ballet & opera, respectively. But the final 8th week will have a special program appropriate to our last performance concert in Carnegie Hall - unless some miracle occurs before that time. (That's why we're keeping the program a mystery for the present.)

In addition we have two special Prisoner festival concerts: one ~~on~~ ^{on} April 4th with Anne Tschelchy & one on May 11th - The Prisoner's 9th Anniversary. Today we're in town for a television from people's program, on this coming Saturday, a musical instrument, & the 6th on April 23rd, which will present Aaron Copland's high school opera, The Second Hurricane.

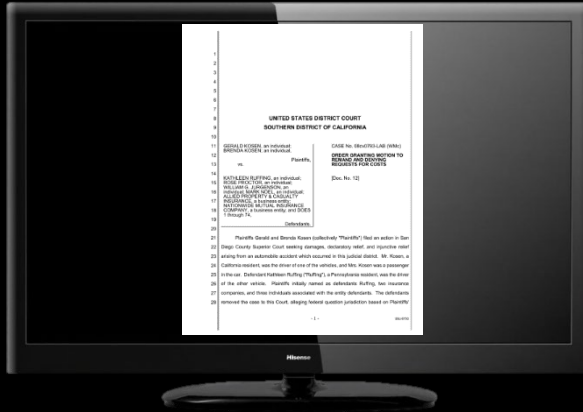
If you ever chance to be on the lawn we'll arrange to have you



1990s – 2000s Workflow



2020s Workflow



Richard C. Wesley

Second Circuit Court of Appeals



“The iPad was a **game changer** for me.”

“With it, I can **work from anywhere** as long as I have wifi access.”





~2011: Clerks taught how to use iPad

“Now I use it all the time!”

“And now, so do many of my fellow judges”





Judicial Retreat:

“Judge Lynch and I did a **demonstration**”

- mark up PDFs
- memos with hyperlinked cases



Every Second Circuit order:

- **Before** retreat = all **paper**
- **After** retreat = all **PDFs**



“[]udges were ... comfortable with PDFs.”

“[W]e immediately reduced the flow of paper for a lot of the court’s motion practice.”





“I can’t read on screens!”

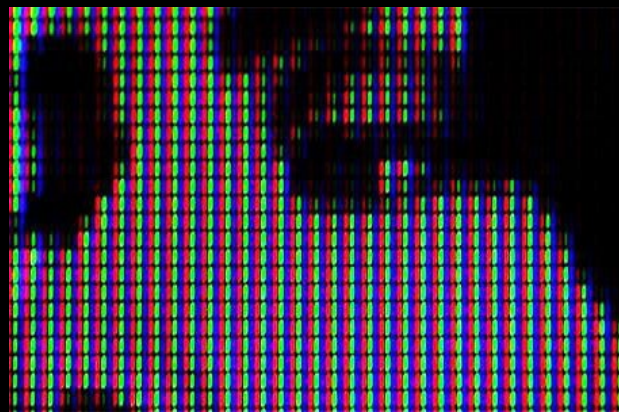
There's a reason
... that's **less true** today.

Paper = 300-600 ppi
(points per inch)





CRT = 60 ppi







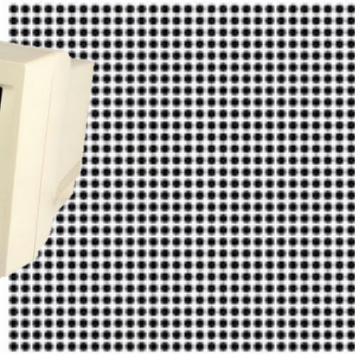
LCD = 110 ppi



Over Time: Better PPI



72 dots (pixels) in 1 inch
← 1 inch →



72 dpi

72 dots per-inch

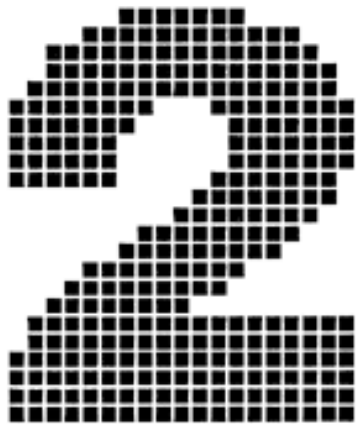
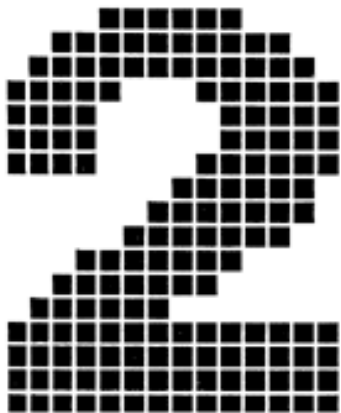
300 dots (pixels) in 1 inch
← 1 inch →



300 dpi

300 dots per-inch







212 ppi

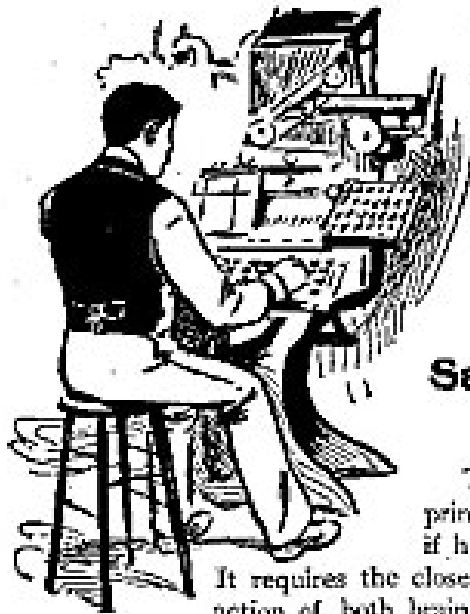
300 ppi

110 ppi



Jakob Nielsen
Usability expert

“[W]e have known for decades that **300 PPI** screens offer **dramatically faster reading speed** than low-density monitors.”



Machine Type- Setters.

**Said to be Hard
on Operators.**

The work of a typesetter in a modern printing office is very exacting, particularly if he runs a linotype or typesetting machine. It requires the closest attention and rapid and sympathetic action of both brain and hand. This machine works much

Better fonts

Remember Courier?

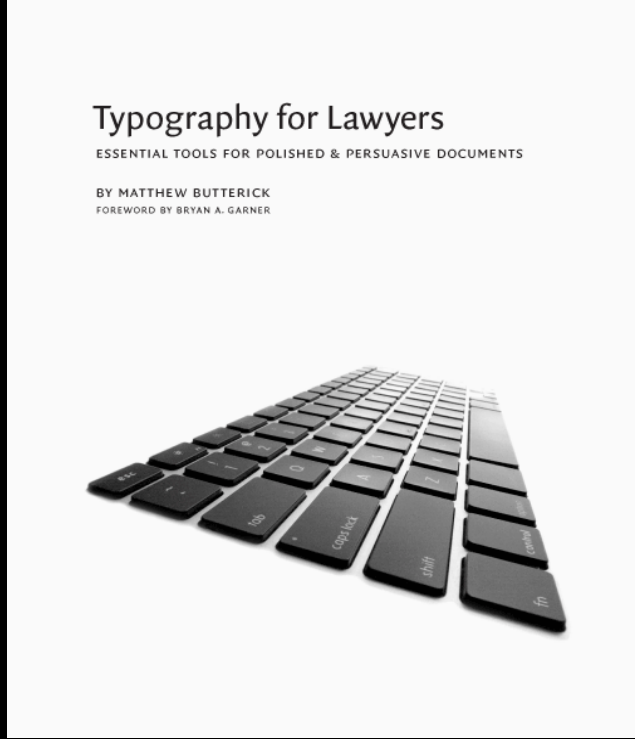
**GOD
HATES**
Times New Roman
Levit. 3:12



Seventh Circuit



“Professional typographers **avoid** using **Times New Roman** for book-length (or **brief-length**) documents. This face was designed for newspapers, which are printed in **narrow columns**”



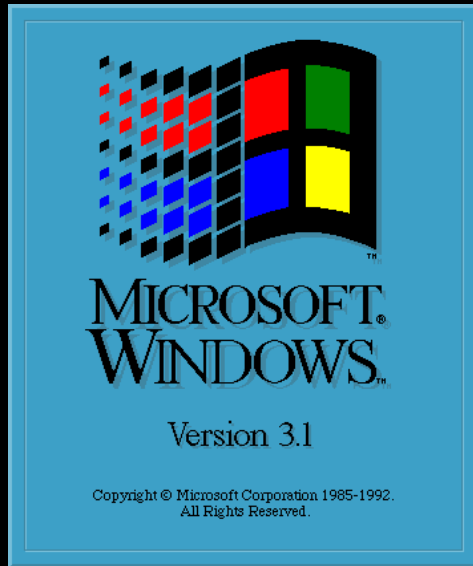
“If you have a choice about using **Times New Roman**, **please stop**. Use something else. . . . Did you make your business cards and letterhead at your local copy shop? No, you didn’t, because you didn’t want them to look **shoddy and cheap**. If you cared enough to avoid the copy shop, then you care enough to **avoid Times New Roman**. **Times New Roman** connotes apathy. You are not apathetic.”

Times New Roman (1932)



Condensed = more text per page

Default in 1992



=



Default in 2007



Calibri

ABCDabcd - Regular

ABCDabcd - Bold

ABCDabcd - Italic

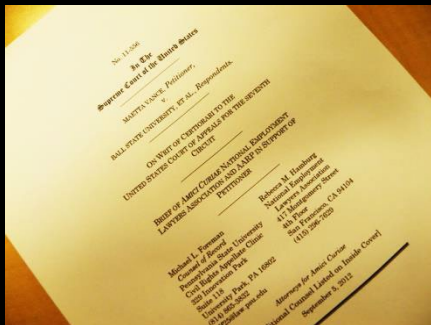
ABCDabcd - Bold Italic

Sans Serif

Serif

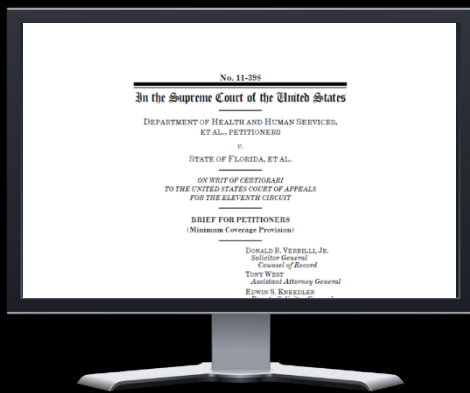


Conventional Wisdom



Paper = **Serif**

(e.g., Book Antiqua)



Screens = **Sans Serif**

(e.g., Arial)

wind

Wofk

Rules require serifs



Fed. R.App. P. 32(a)

(5) Typeface. . . .

- a. A proportionally spaced face **must include serifs**, but **sans-serif type may** be used in **headings and captions**.

7th Cir. Typography

Studies have shown that long passages of **serif** type are **easier** to **read** and **comprehend** than long passages of sans-serif type. The rule accordingly limits the **principal sections** of submissions to **serif** type, although sans-serif type may be used in headings and captions.

But what if
documents are
consumed digitally?

No. 11-398

In the Supreme Court of the United States

DEPARTMENT OF HEALTH AND HUMAN SERVICES,
ET AL., PETITIONERS

v.

STATE OF FLORIDA, ET AL.

*ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT*

BRIEF FOR PETITIONERS
(Minimum Coverage Provision)

DONALD B. VERRILLI, JR.
*Solicitor General
Counsel of Record*

TONY WEST
Assistant Attorney General

EDWIN S. KNEEDLER
Assistant Attorney General

But we don't know
how judges will read
briefs — paper or
screens.

What can we do?

There's a font [set] and
technology for that.



Joe Friend
Microsoft

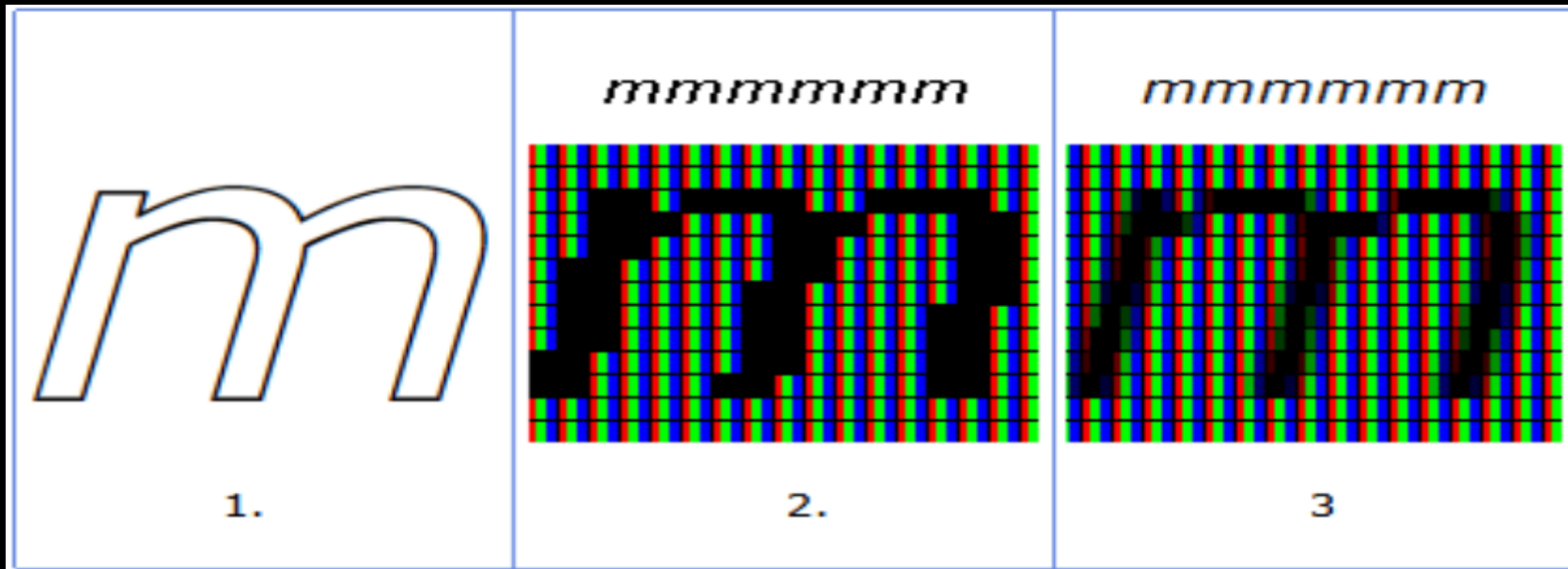
“We believed that more and more documents would never be printed but would solely be consumed on a digital device.”



Joe Friend
Microsoft

“To support digital consumption, the new fonts were created to **improve screen readability**. They [Microsoft employees] do this via a technology called **ClearType**.”

LCDs: ClearType



No ClearType

ClearType



PDFs have similar tech



ClearType Fonts?

Cambria

The five boxing wizards jump quickly

The five boxing wizards jump quickly

The five boxing wizards jump quickly

The five boxing wizards jump quickly

Calibri

The five quickly

The five quickly

The five quickly

The five quickly



Calibri

Constantia

The five boxing wizards jump quickly

The five boxing wizards jump quickly

The five boxing wizards jump quickly

The five boxing wizards jump quickly

Candara

The five boxing wizards jump quickly

The five boxing wizards jump quickly

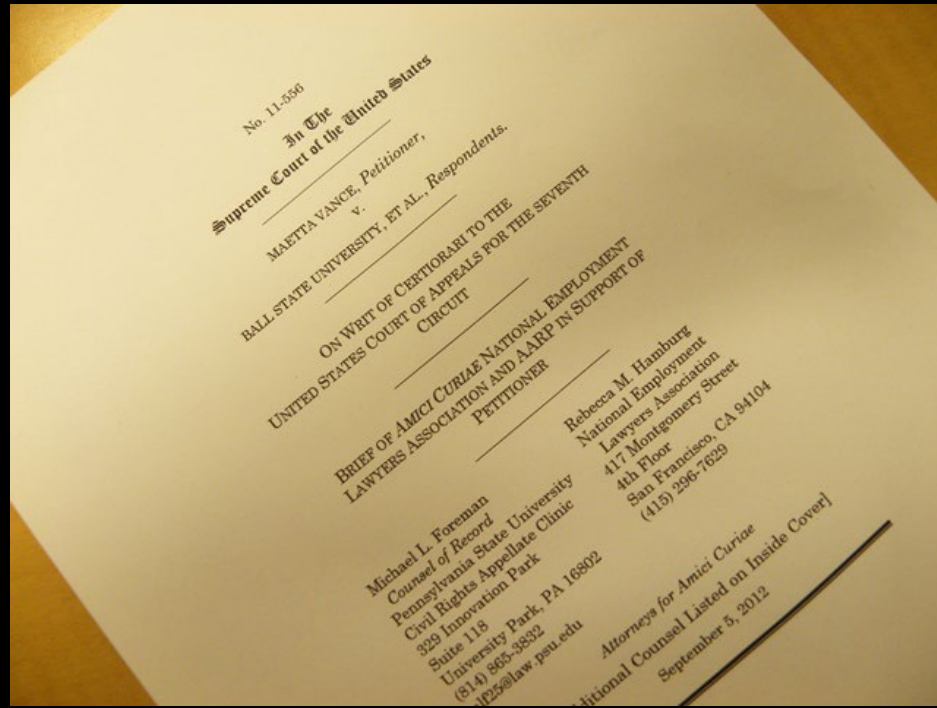
The five boxing wizards jump quickly

The five boxing wizards jump quickly

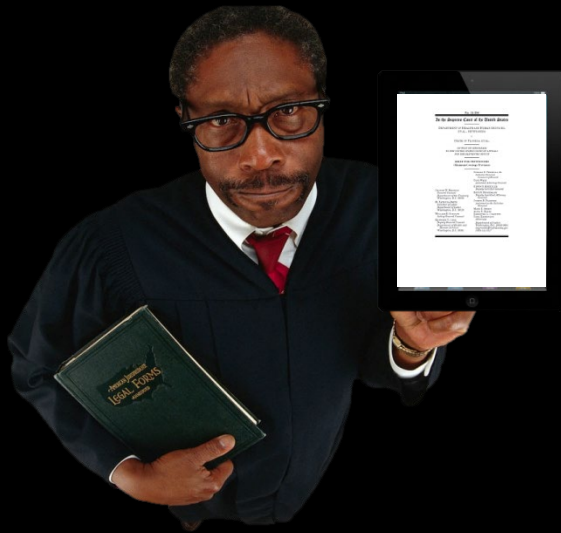
must
include serifs

Serif

Sans Serif



Lawyers currently write for paper



... for judges and clerks
who read on screens.



Shifting culture

How do we read Websites?



Eye-tracking studies



Vision & Values

Delivering What's Important

Our vision is to realize the tremendous power of the BNSF Corporation and its people the right way by providing transportation services that consistently meet our customers' expectations.

A vision statement is only as good as the people who work to bring it to life each day. To live the vision, the diverse group of more than 20,000 professionals who comprise the BNSF community embrace a set of shared values:

- Listening to customers and doing what it takes to meet their expectations
- Empowering one another, showing concern for our colleagues' well-being and respect for their talents and achievements
- Continuously improving by striving to do the right thing safely and efficiently
- Celebrating our rich heritage by doing on our successes as we shape our promising future

Success in living our vision and values is evident when we fulfill the highest expectations of our four key stakeholder groups:

- Our customers find it easy to do business with us, receive 100% on-time, damage-free service, accurate and timely information, rugged fleet shipment, and the best transportation value.
- Our employees work in a safe and secure environment, and focus on continuous improvement, share in the opportunity for personal and professional growth available to all team members, and take pride in their association with BNSF.
- Our owners earn financial returns that exceed other publicly traded companies as a result of BNSF's superior revenue growth, an operating ratio in the low 70s, and a return on invested capital that is greater than our cost of capital.
- The communities we serve benefit from our sensitivity to their interests and to the environment in general, our adherence to the highest legal and ethical standards, and the participation of our company and our employees in community activities.

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F Patterns

ABOUT BNSF PROSPECTIVE CUSTOMERS MARKETS & SERVICES CUSTOMER SOLUTIONS INVESTORS MEDIA SUPPLIERS COMMUNITIES EMPLOYEES & RETAILERS CAREERS

BNSF RAILWAY

ABOUT BNSF

- Contact Us
- Vision & Values**
- Company History
- BNSF Corporation Officers
- BNSF Corporation Directors
- Celebrating Success
- Licensee Information
- BNSF Store

Vision & Values

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Our vision is to realize the tremendous potential of The Burlington Northern and Santa Fe Railway by providing transportation services that consistently meet our customers' expectations.

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- Our owners earn financial returns that exceed other railroads and the general market as a result of BNSF's superior revenue growth, an operating ratio in the low 70s, and a return on invested capital that is greater than our cost of capital

ALSO SEE

- Corporate Governance
- BNSF Today
- News Releases
- BNSF Store
- Careers
- Suppliers
- BNSF Facts
- Railway Magazine

Hot Stuff!
BNSF Merchandise

Your straight line to interline pricing.

BNSF responds to Hurricanes Katrina and Rita.

Learn more about recent fires, relief efforts and service solutions.



“[E]ye tracking supports that users do not read all of the content on a Web page.”

—Usability.gov



“The use of content that fits an **F-shaped pattern** (such as **headings** followed by paragraphs or bullet points) **increases** the likelihood that they will be **encountered** by a user who is **skimming** a web page.”

—Usability.gov

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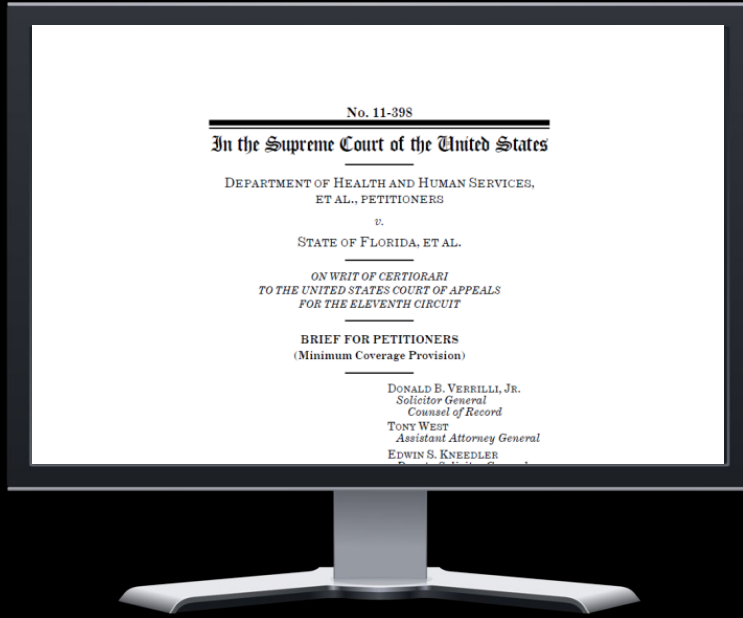
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“[U]tilize techniques for making content easier to read.

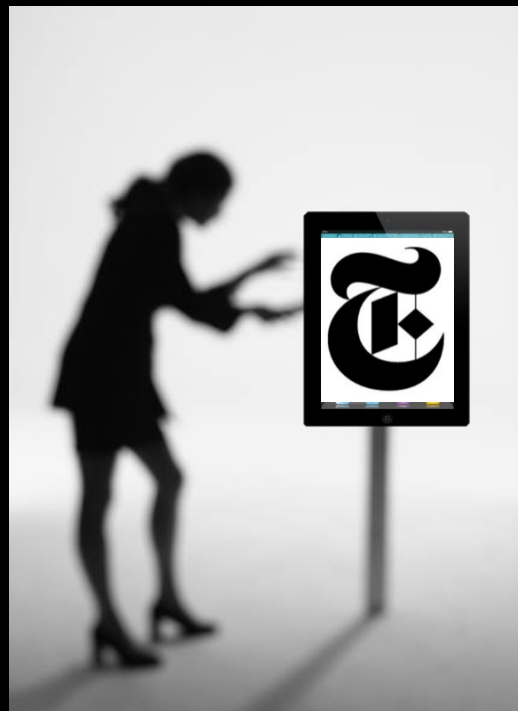
- Highlight keywords,
- use headings,
- write short paragraphs, and
- utilize lists.”

—Usability.gov



Changing Court Culture

Judges are people



At home, judges read online.



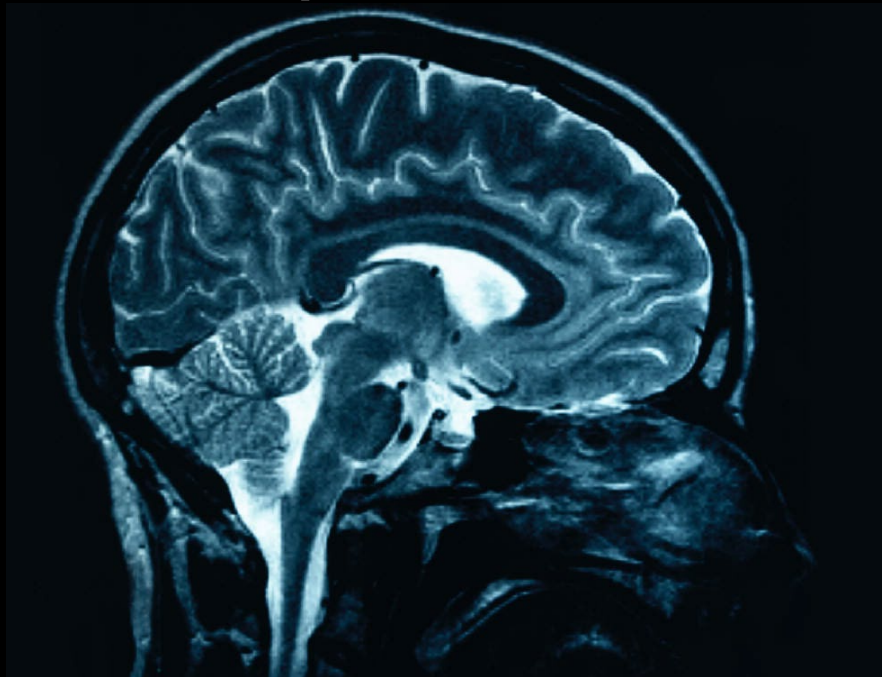
More so for Millennial and Gen Z clerks



Home → Screen

Work → Screen

One keeps the same brain.



Donald Trump Warns of 'Riots' if Party Blocks Him at Convention

10:15 AM ET Maggie Haberman



Donald J. Trump celebrated his primary victories at his Mar-a-Lago club in Palm Beach, Fla., on Tuesday. Eric Taylor for The New York Times

Donald J. Trump warned of "riots" around the Republican National Convention should he fall slightly short of the 1,237 delegates he needs to clinch the nomination and the party moves to select another candidate.

The remark from Mr. Trump, in an interview on CNN's "New Day," came less than 12 hours after he won the Republican primaries in Florida, Illinois and North Carolina and [extended his delegate lead](#) to roughly 200 over his closest competitor, Senator Ted Cruz.

The front-runner, who has alternated between saying he wants to unite the party and savaging his rivals and critics, predicted a "natural healing process" in the party once the primaries end and the Republican convention takes place in Cleveland beginning on July 18.

"I think we'll win before getting to the convention, but I can tell you, if we didn't and if we're 20 votes short or if we're 100 short and we're at 1,100 and somebody else is at 500 or 400, because we're way ahead of everybody. I don't think you can say that we don't get it

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be prepared, as in the case of the opinion, and will be placed at the beginning of the syllabus. The syllabus is not part of the opinion. The syllabus is prepared by the Reporter of Decisions.

SUPREME COURT OF THE UNITED STATES

Syllabus

NATIONAL FEDERATION OF INDEPENDENT BUSINESS, ET AL., v. SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 11–398. Argued March 26, 27, 28, 2012—Decided June 28, 2012*

In 2010, Congress enacted the Patient Protection and Affordable Care Act in order to increase the number of Americans covered by health insurance and decrease the cost of health care. One key provision in the individual mandate, which requires most Americans to maintain "minimum essential" health insurance coverage, 26 U.S.C. §1901A. For individuals who are not exempt, and who do not receive health insurance through an employer or government program, the means of satisfying the requirement is to purchase insurance from a private company. Beginning in 2014, those who do not comply with the mandate must make a "financial responsibility payment" to the Federal Government. §1901A(c). The Act provides that this "penalty" will be paid to the Internal Revenue Service with an individual's tax, and "shall be assessed and collected in the same manner" as tax penalties. §1901A(c)(1).

Analys[is] key provisions of the Act is the Medicaid expansion. The current Medicaid program offers Federal funding to States to assist pregnant women, children, senior families, the blind, the elderly, and the disabled in obtaining medical care. 42 U.S.C. §1396d(a). The Affordable Care Act expands the scope of the Medicaid program and increases the number of individuals the States must cover. For ex-

*Together with No. 11–399, *Department of Health and Human Services v. Florida et al.*, and No. 11–397, *Florida et al. v. Department of Health and Human Services et al.*, also on certiorari to the same court.

Our screen habits have emerged



A screenshot of the Kiehl's website with a heatmap overlay. The heatmap highlights the navigation bar, the 'YOUR SHOPPING BAG' section, and the 'YOU MAY ALSO LIKE' section. The 'YOUR SHOPPING BAG' section is particularly prominent, with high interaction in the product list and the 'Add to Bag' button.

YOUR SHOPPING BAG

YOUR SHOPPING BAG

ITEMS

Ultra Facial Moisturizer SPF 15
2.21 oz (62.5 g) \$14.00 \$14.00

Get the look you're wearing. Add to Bag for \$15.00

Click to view details

Total \$15.00

Many of our customers enjoy giving Kiehl's products as gifts not only for our products but also for our unique gift box presentation. Your gift box will come in a simple white wrapped box with a Kiehl's Anniversary sticker in the corner. Inside the box is a Kiehl's gift card with your customized gift message. Another Kiehl's reader finds together the search based product items under the theme. The gift, products and services are featured on a list of our signature releases.

View Gift Packaging

YOU MAY ALSO LIKE

SUPERB EFFICIENT ANTI-PERSPIRANT & DEODORANT IP-84MM-41

SPIN
With Citrus, Citrus and Linseed Extracts
4.23 oz (120 g) \$10.00

View Details

4.23 oz (120 g) \$10.00

Add to Bag

4.23 oz (120 g) \$10.00

View Details

4.23 oz (120 g) \$10.00

Add to Bag

Continue Shopping **Check Out**

About Kiehl's | Comments & Suggestions | Privacy Policy | Site Map | Employment | Corporate Services | Our Mission | © 2015 Kiehl's since 1851

A screenshot of the BNSF Railway website with a heatmap overlay. The heatmap highlights the navigation bar, the 'Vision & Values' section, and the 'ABOUT BNSF' section. The 'Vision & Values' section is particularly prominent, with high interaction in the text and the 'Success in living our vision' section.

BNSF RAILWAY

ABOUT BNSF

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BNSF Corporation Directors

Calibrating Success

Licensee Information

BNSF Store

Vision & Values

Delivering What's Important

Our vision is to realize the tremendous power of the Burlington Northern and Santa Fe Railway by providing transportation services that consistently meet our customers' expectations.

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- Listening to customers and doing what it takes to meet their expectations
- Empowering each other, showing concern for our colleagues' well-being and respect for their talents and achievements
- Continuously improving by striving to do the right thing safely and efficiently
- Celebrating our rich heritage by doing on our successes as we shape our promising future

Success in living our vision and values is evident when we fulfill the highest expectations of our four key stakeholder groups:

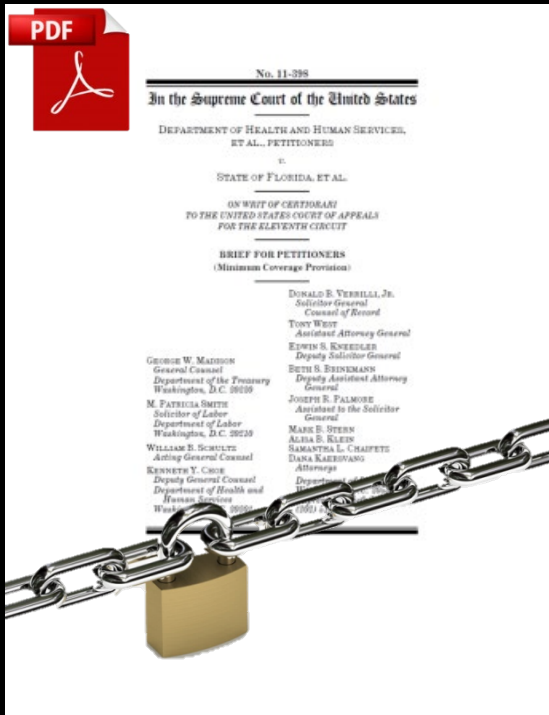
- Our customers find it easy to do business with us, receive 100% on-time, damage-free service, accurate and timely information, rugged, dry, safe shipment, and the best transportation value.
- Our employees work in a safe and secure environment, and focus on continuous improvement, share in the opportunity for personal and professional growth available to all team members, and take pride in their association with BNSF.
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To report an emergency on the railroad, call BNSF at 800.832.8452

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“Master copy” is electronic, not paper



Clerks draw from briefs.

**BARTLEBY,
THE SCRIVENER**
Herman Melville



So make them functional.



In 1939 the Yorkshire Parish Register Society, of which the Parish Register Section of the Yorkshire Archaeological Society is the successor (the publications having been issued in numerical sequence without any break) published as its Volume No. 108 the

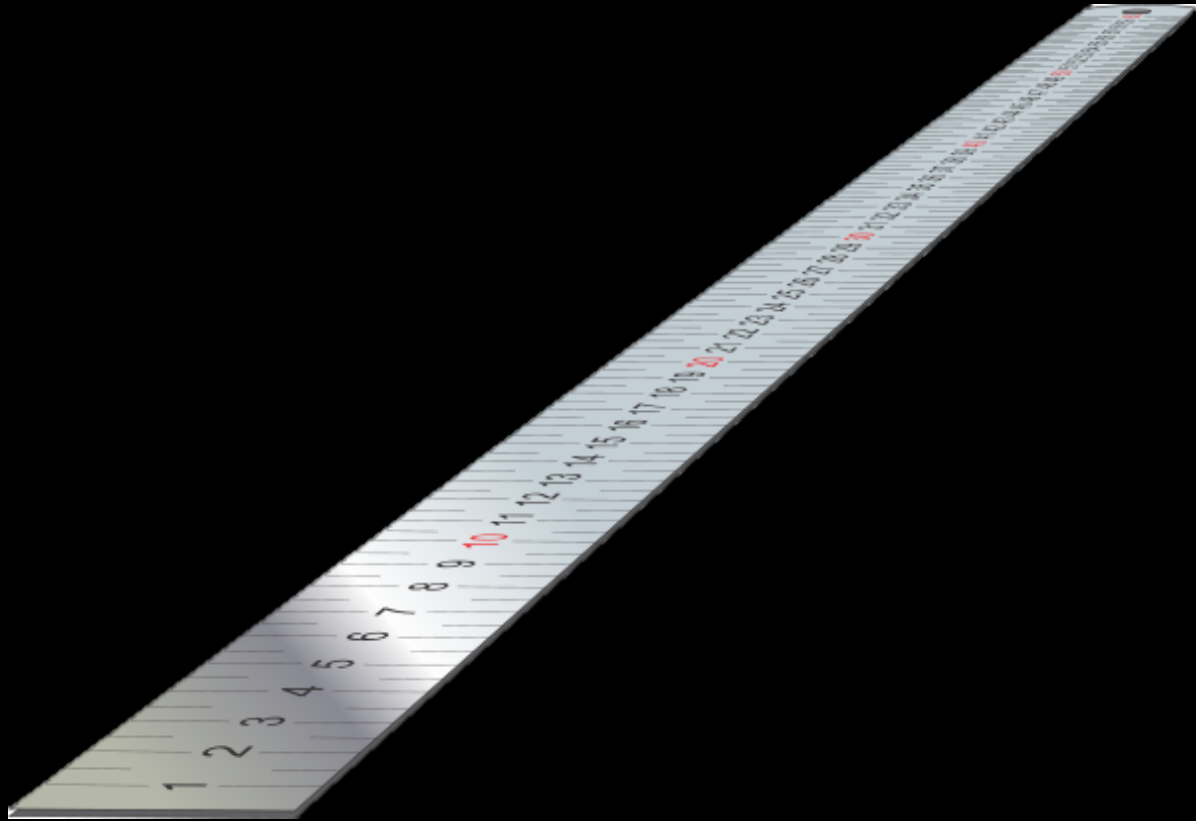
In 1939 the Yorkshire Parish Register Society, of which the Parish Register Section of the Yorkshire Archaeological Society is the successor (the publications having been issued in numerical sequence without any break) published as its Volume No. 108 the

“Scan to PDF” vs. “Print to PDF”



Typography:
Don't take our word for it.

Objective Standards,
NOT Subjective Tastes.



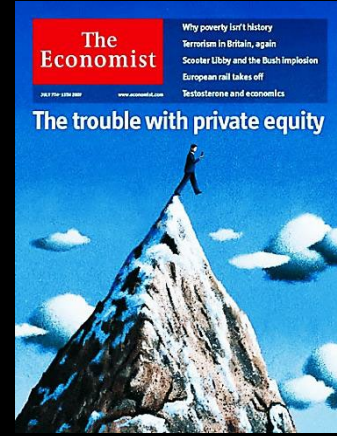
Building cars?
Ask professionals.



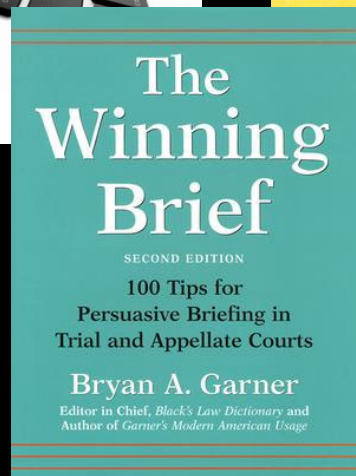
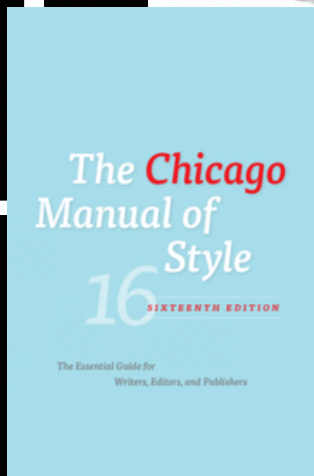
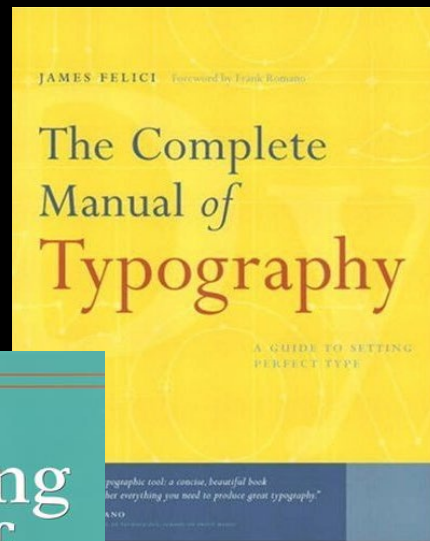
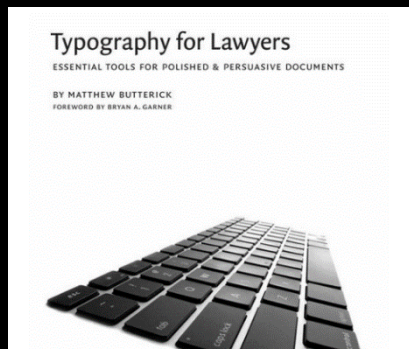
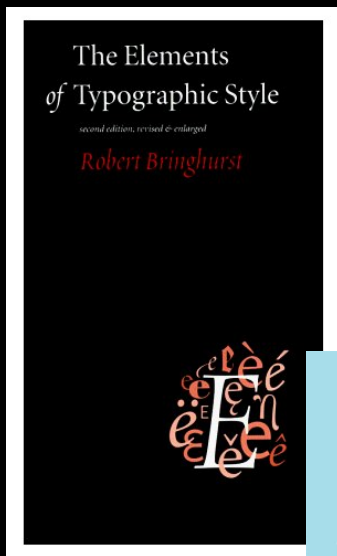
Mercedes-Benz

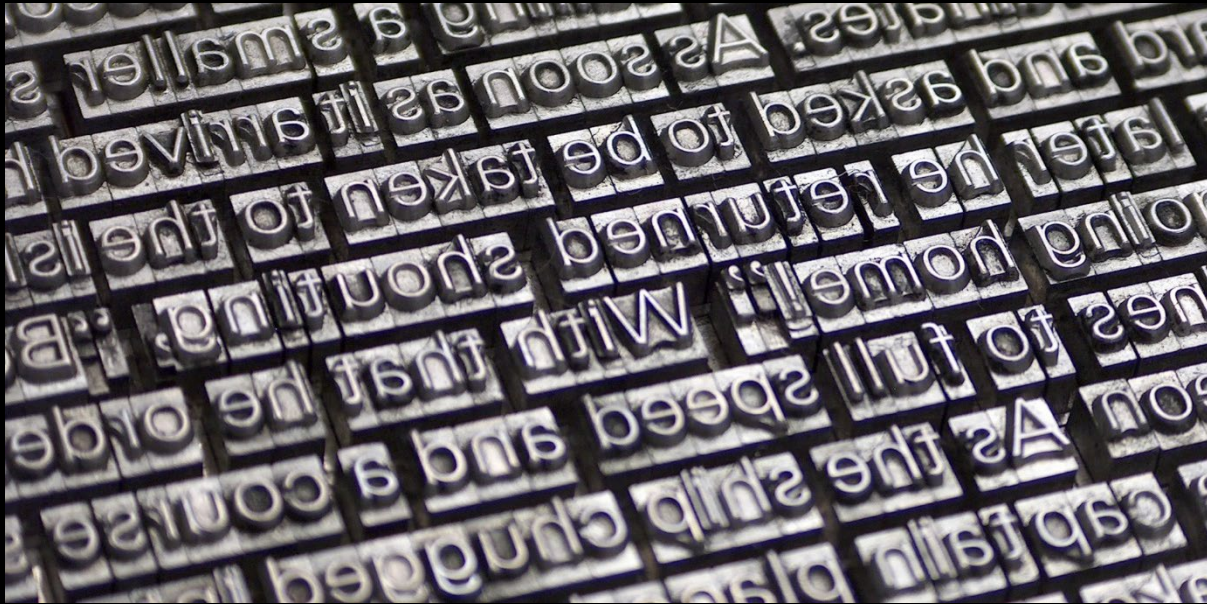


Building documents?



Ask professionals.





Effective Written Advocacy Through Typography

Traditional (and valid) typography considerations

... that most lawyers ignore:



Font choice



Not choosing (keeping the default) is a choice.

**GOD
HATES**
Times New Roman
Levit. 3:12



But don't most courts *require*
Times New Roman?



No.

Nearly all require only *serif* fonts.





Fed. R.App. P. 32(a)

(5) Typeface. . . .

- a. A proportionally spaced face must include **serifs**, but sans-serif type may be used in headings and captions.

The quick brown fox jumps over a lazy dog — Times New Roman

Best Bets

The quick brown fox jumps over a lazy dog — Garamond

The quick brown fox jumps over a lazy dog — Baskerville Old Face

The quick brown fox jumps over a lazy dog — Goudy Old Style

The quick brown fox jumps over a lazy dog — Bell MT

The quick brown fox jumps over a lazy dog — Book Antiqua

The quick brown fox jumps over a lazy dog — Century Schoolbook

Spacing

Arial 13/13

Mauris iaculis porttitor
posuere. Praesent id metus
massa, ut blandit odio. Proin
quis tortor orci. Etiam at
risus et justo dignissim
congue. Donec congue
lacinia dui, a porttitor lectus
condimentum laoreet. Nunc
eu ullamcorper orci. Quisque
eget odio ac lectus
vestibulum faucibus eget in
metus. In pellentesque
faucibus vestibulum. Nulla at
nulla justo, eget luctus tortor.
Nulla facilisi. Duis aliquet
egestas purus in blandit.
Curabitur vulputate, ligula
lacinia scelerisque tempor,
lacus lacus omare ante, ac
egestas est uma sit amet
arcu. Class aptent taciti
sociosqu ad litora torquent.

Arial 13/18

Mauris iaculis porttitor
posuere. Praesent id metus
massa, ut blandit odio. Proin
quis tortor orci. Etiam at
risus et justo dignissim
congue. Donec congue
lacinia dui, a porttitor lectus
condimentum laoreet. Nunc
eu ullamcorper orci. Quisque
eget odio ac lectus
vestibulum faucibus eget in
metus. In pellentesque
faucibus vestibulum. Nulla at
nulla justo, eget luctus tortor.
Nulla facilisi. Duis aliquet
egestas purus in blandit.
Curabitur vulputate, ligula
lacinia scelerisque tempor,
lacus lacus omare ante, ac
egestas est uma sit amet
arcu. Class aptent taciti
sociosqu ad litora torquent.

Arial 13/22

Mauris iaculis porttitor
posuere. Praesent id metus
massa, ut blandit odio. Proin
quis tortor orci. Etiam at
risus et justo dignissim
congue. Donec congue
lacinia dui, a porttitor lectus
condimentum laoreet. Nunc
eu ullamcorper orci. Quisque
eget odio ac lectus
vestibulum faucibus eget in
metus. In pellentesque
faucibus vestibulum. Nulla at
nulla justo, eget luctus tortor.
Nulla facilisi. Duis aliquet
egestas purus in blandit.
Curabitur vulputate, ligula
lacinia scelerisque tempor,
lacus lacus omare ante, ac
egestas est uma sit amet
arcu. Class aptent taciti
sociosqu ad litora torquent.

“Double spaced”

Supreme Court R. 33: “every document . . . double spaced”

Fed. R.App. P. 32(a)(4): “text must be double-spaced”

Minn. L. R. 7.1(f): “typewritten and double-spaced”



True “double space” = 2.0x
12 pt font = 24 pt spacing



Word “double space” = 2.3x
12 pt font = 30 pt spacing



“Double Space”

congue massa. Fusce posuere, magna s

libero, sit amet commodo magna eros

Nunc viverra imperdiet enim. Fu

Pellentesque habitant morbi tristi

turpis egestas. Proin pharetra nonum

Paragraph

Indents and Spacing | Line and Page Breaks

General

Alignment: **Left**

Outline level: **Body Text**

Indentation

Left: 0" | Special: **First line** | By: 0.4"

Mirror indents

Spacing

Before: 0 pt | **Line spacing** | At:

After: 0 pt | **Double**



True double space

congue massa. Fusce posuere, magna s

libero, sit amet commodo magna eros

Nunc viverra imperdiet enim. Fu

Pellentesque habitant morbi tristi

turpis egestas. Proin pharetra nonum

Paragraph

Indents and Spacing | Line and Page Breaks

General

Alignment: **Left**

Outline level: **Body Text**

Indentation

Left: 0" | Special: **First line** | By: 0.4"

Mirror indents

Spacing

Before: 0 pt | **Line spacing**: **Exactly** | At: **24 pt**

After: 0 pt

What do courts mean?



“Double space” = 2.33x

12 pt font = 30 pt spacing

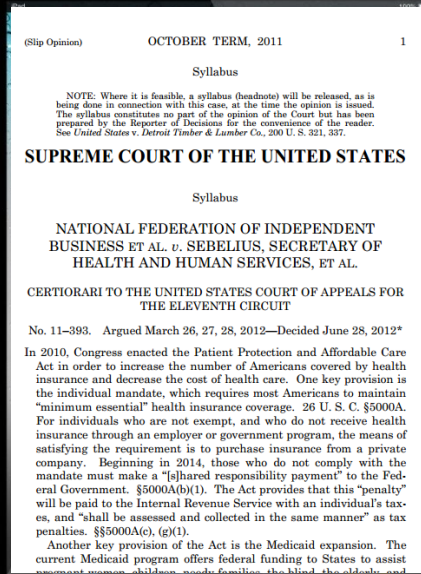


“Double space” = 2.0x

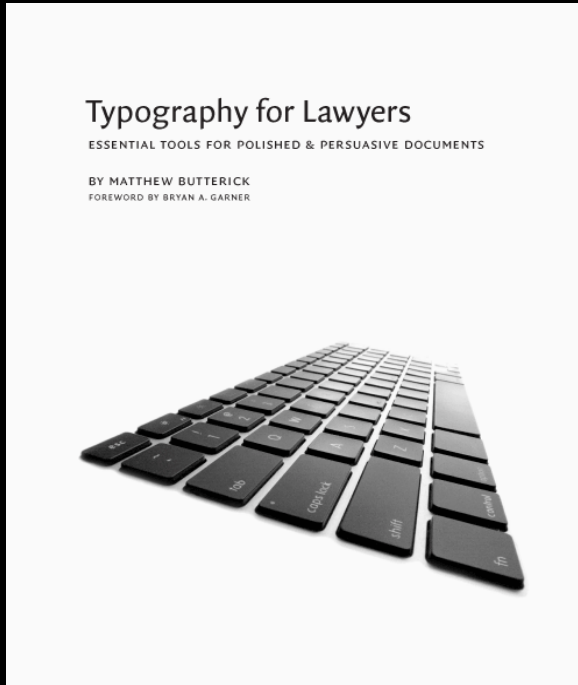
12 pt font = 24 pt spacing

Tablets are smaller.

More (readable) lines per page are better.



Line Spacing: 1.2x to 1.45x



“For most text, the optimal line spacing is between **120% and 145%** of the point size.”

14pt font = 17-20pt spacing

Line Spacing

Eric Magnuson, *Briefly: Line dancing for lawyers*, Minnesota Lawyer (September 17, 2015),

<https://minnlawyer.com/2015/09/17/briefly-line-dancing-for-lawyers/>

CafeX Communications, Inc. vs. Amazon Web Services, Inc., No. 17-cv-01349, Order for Sanctions (S.D.N.Y. March 30, 2017),

<https://ecf.nysd.uscourts.gov/doc1/127119996536>

Headings

- More **white space before** than after
- Keep with next
- **Slightly larger (1pt)** than body text

Heading 2	A. Eliminate Times New Roman
Heading 3	1. Seventh Circuit
Body Text	“Professional typographers avoid using Times New Roman (in brief-length) documents. This face was designed for narrow columns, and has a small x-height in order to square up in narrow space. Type with a small x-height functions well in

Margins

(Slip Opinion) OCTOBER TERM, 2011 1

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

NATIONAL FEDERATION OF INDEPENDENT BUSINESS ET AL. v. SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 11–393. Argued March 26, 27, 28, 2012—Decided June 28, 2012*

In 2010, Congress enacted the Patient Protection and Affordable Care Act in order to increase the number of Americans covered by health insurance and decrease the cost of health care. One key provision is the individual mandate, which requires most Americans to maintain “minimum essential” health insurance coverage. 26 U. S. C. §5000A. For individuals who are not exempt, and who do not receive health insurance through an employer or government program, the means of satisfying the requirement is to purchase insurance from a private company. Beginning in 2014, those who do not comply with the mandate must make a “[s]hared responsibility payment” to the Federal Government. §5000A(b)(1). The Act provides that this “penalty” will be paid to the Internal Revenue Service with an individual’s taxes, and “shall be assessed and collected in the same manner” as tax penalties. §§5000A(c), (g)(1).

Another key provision of the Act is the Medicaid expansion. The current Medicaid program offers federal funding to States to assist pregnant women, children, needy families, the blind, the elderly, and the disabled in obtaining medical care. 42 U. S. C. §1396d(a). The Affordable Care Act expands the scope of the Medicaid program and increases the number of individuals the States must cover. For ex-

* Together with No. 11–308, *Department of Health and Human Services et al. v. Florida et al.*, and No. 11–400, *Florida et al. v. Department of Health and Human Services et al.*, also on certiorari to the same court.

In the United States Court of Appeals For the Seventh Circuit

No. 11-1453

WENFANG LIU,

Plaintiff-Appellant,

v.

TIMOTHY MUND,

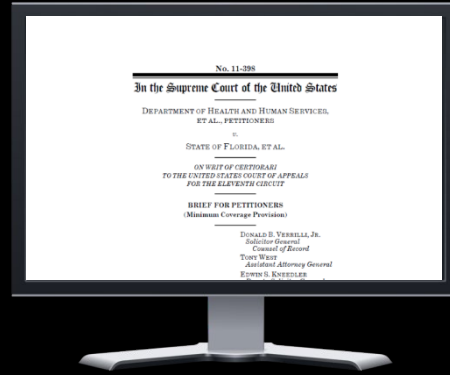
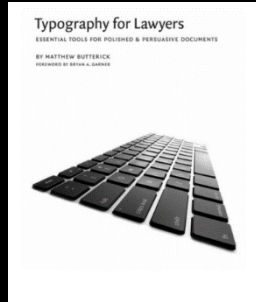
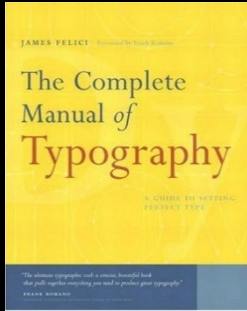
Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Wisconsin.
No. 3:09-cv-00500-wmc—William M. Conley, Chief Judge.

ARGUED JUNE 22, 2012—DECIDED JULY 12, 2012

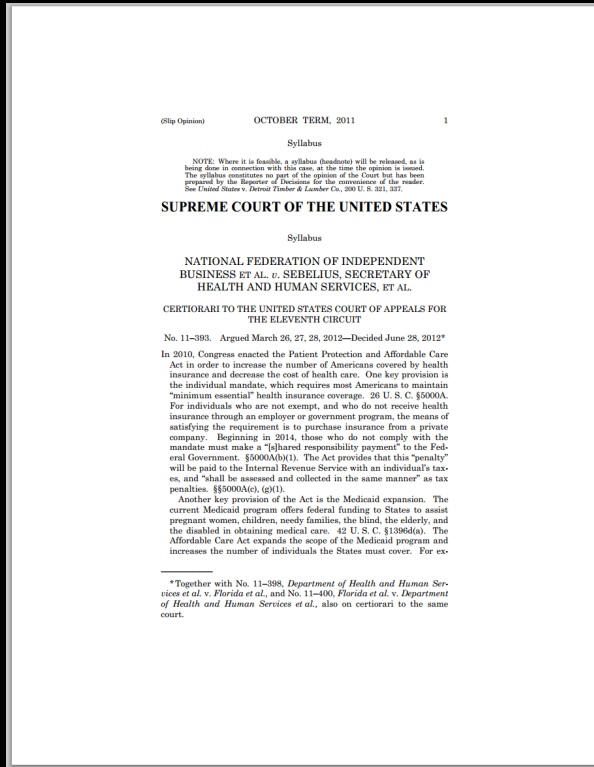
Before POSNER, ROVNER, and WOOD, *Circuit Judges.*

POSNER, *Circuit Judge.* Timothy Mund, an American, married Wenfang Liu, a Chinese woman 19 years his junior, in China. Two years later the couple decided to move to the United States. For Liu to be admitted as a permanent resident on the basis of her marriage to an American, her husband had to sign an “I-864 affidavit,” agreeing to support his wife at 125 percent of the poverty level (approximately \$13,500 a year), even if



Translating typography
considerations to screens

Tablets are smaller than 8.5” x 11” pages



Narrower: Smaller Margins?

(Slip Opinion) OCTOBER TERM, 2011 1

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

NATIONAL FEDERATION OF INDEPENDENT BUSINESS ET AL. v. SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 11–398. Argued March 26, 27, 28, 2012—Decided June 28, 2012*

In 2010, Congress enacted the Patient Protection and Affordable Care Act in order to increase the number of Americans covered by health insurance and decrease the cost of health care. One key provision is the individual mandate, which requires most Americans to maintain “minimum essential” health insurance coverage. 26 U. S. C. §5000A. For individuals who are not exempt, and who do not receive health insurance through an employer or government program, the means of satisfying the requirement is to purchase insurance from a private company. Beginning in 2014, those who do not comply with the mandate must make a “[s]hared responsibility payment” to the Federal Government. §5000A(b)(1). The Act provides that this “penalty” will be paid to the Internal Revenue Service with an individual’s taxes, and “shall be assessed and collected in the same manner” as tax penalties. §5000A(c), (g)(1).

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(Slip Opinion) OCTOBER TERM, 2011 1

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SUPREME COURT OF THE UNITED STATES

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NATIONAL FEDERATION OF INDEPENDENT BUSINESS ET AL. v. SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

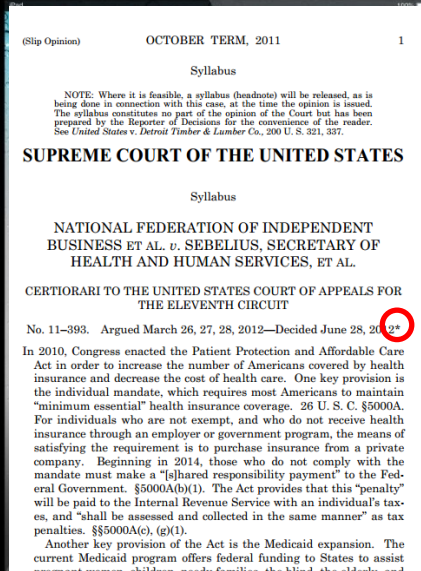
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Footnotes?





Simplify

Resist the temptation to make more



You need less.



Hyperlinks in briefs

Potentially thousands of pages (within page limits)



Skimmable and digestible



A screenshot of the Kiehl's website with a heatmap overlay. The heatmap highlights the top navigation bar, the main content area, and the bottom navigation bar. The left sidebar also shows some attention, particularly in the top and middle sections. The website content includes a shopping bag, product recommendations, and a navigation menu.

A screenshot of the BNSF website with a heatmap overlay. The heatmap highlights the top navigation bar, the main content area, and the bottom navigation bar. The left sidebar also shows some attention, particularly in the top and middle sections. The website content includes a navigation menu, a 'Vision & Values' section, and a 'Hot Stuff' section.

Make your decisionmaker's job easier



Apply those concepts to screens



Vision & Values

Delivering What's Important

Our vision is to realize the tremendous potential of The Burlington Northern and Santa Fe Railway by providing transportation services that consistently meet our customers' expectations.

A vision statement is only as good as the people who work to bring it to life each day. To live the vision, the diverse group of more than 38,000 professionals who comprise the BNSF community embrace a set of shared values:

- Listening to customers and doing what it takes to meet their expectations
- Empowering one another, showing concern for our colleagues' well-being and respect for their talents and achievements
- Continuously improving by striving to do the right thing safely and efficiently
- Celebrating our rich heritage and building on our success as we shape our promising future

Success in living our vision and values is evident when we fulfill the highest expectations of our four key stakeholder groups:

- Our customers find it easy to do business with us, receive 100% on-time, damage-free service, accurate and timely information regarding their shipment, and the best transportation value
- Our employees work in a safe and secure environment, are focused on continuous improvement, share in the opportunity for personal and professional growth available to all team members, and take pride in their association with BNSF
- Our owners earn financial returns that exceed other railroads and the general market as a result of BNSF's superior revenue growth, an operating ratio in the low 70s, and a return on invested capital that is greater than our cost of capital

Questions?



FIN