

# Technology and the Appellate Process: Screen Writing for Screen Reading



Eric Magnuson



Damien Riehl

ROBINS, KAPLAN, MILLER & CIRESI LLP



Why technology?



**BUDGET**



**Efficiency**

**Straight Ahead**



How courts are dealing with it

# Minnesota's eCourtMN initiative



[Annual Report](#)



**MINNESOTA  
JUDICIAL BRANCH**

# National Conference of Appellate Court Clerks



[E-Filing in State Appellate Courts: An Appraisal](#)



25 Years Later, PACER, Electronic Filing  
Continue to Change Courts

Access to Court Opinions Expands

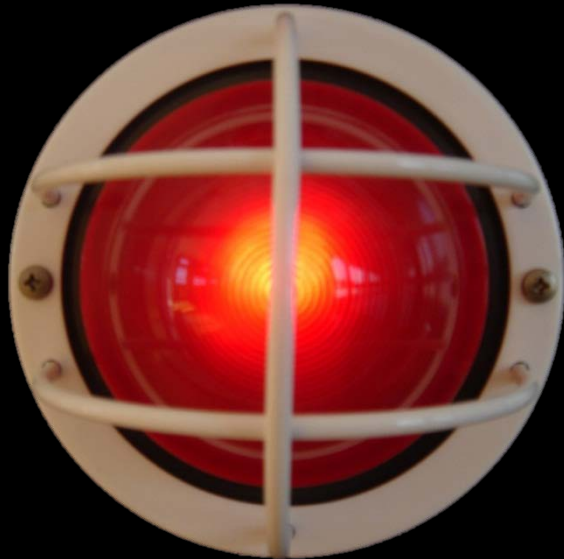
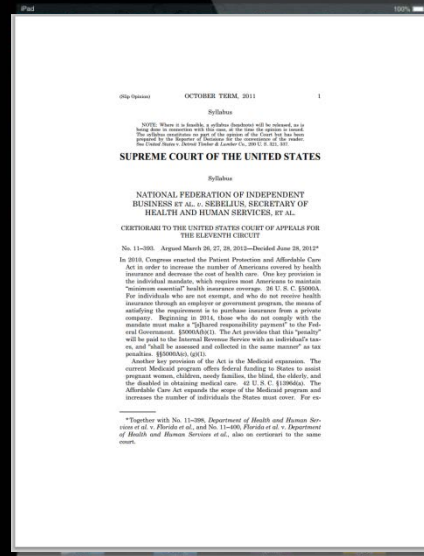


# Eighth Circuit



Michael Gans  
Clerk of Court

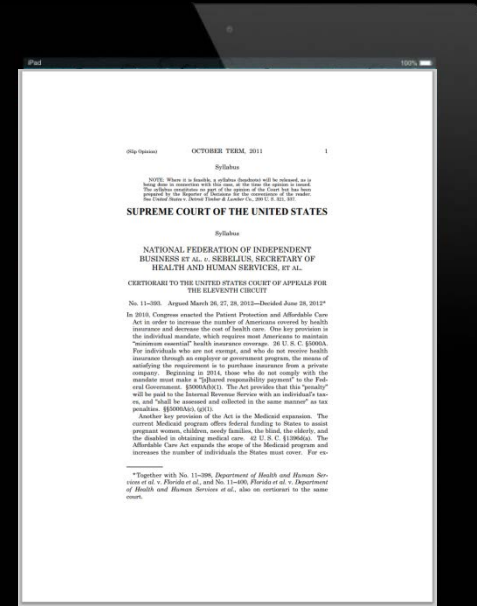






# Eighth Circuit Local Rules

## Local Rule 28A(g)(5): Addendum electronically



Case Management

# CM/ECF

*Next Generation*

Electronic Case Files



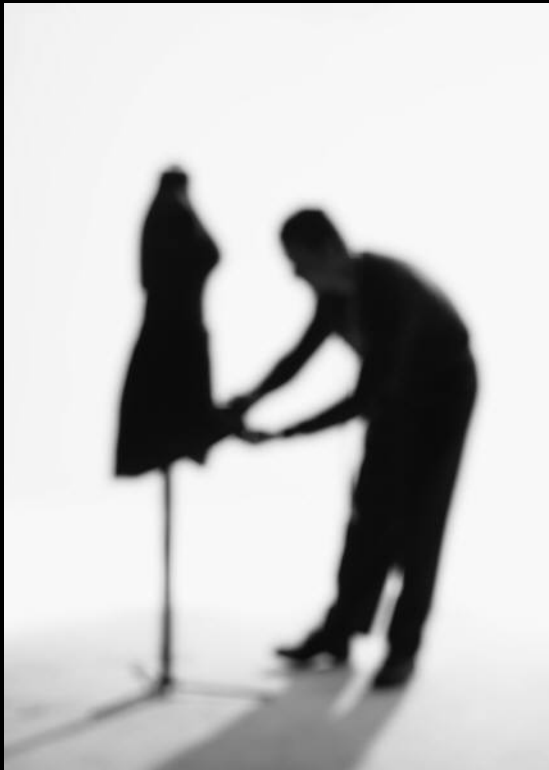
Single login across all  
courts where lawyer  
is registered

Case Management

# CM/ECF

*Next Generation*

Electronic Case Files



Customize screens

Display specific information

# CM/ECF

Next Generation

Electronic Case Files



Emphasize remote access

- For Lawyers
- For Judges

# Link Rot – Perma

## Link Rot

## Lawrence Lessig's study of link rot

50% of SCOTUS  
links are dead



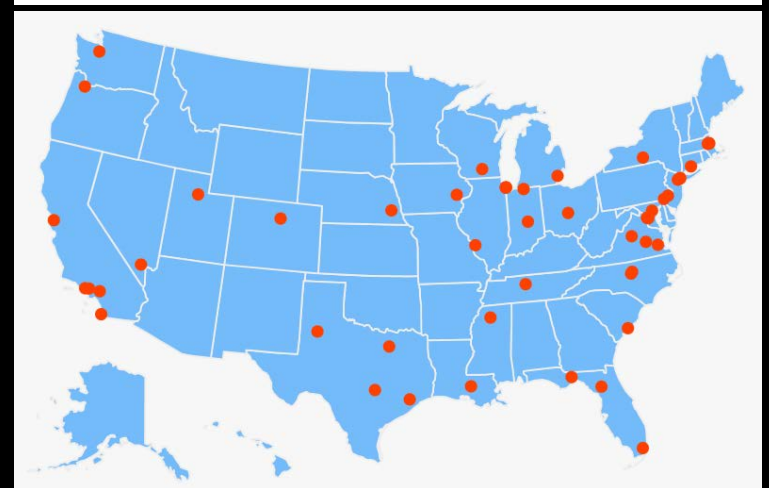
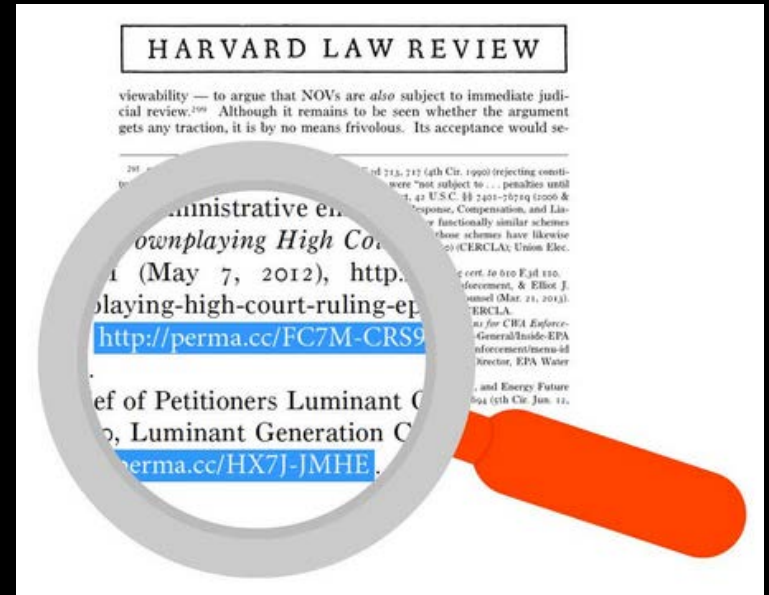


# perma.cc ∞

Seeks to address link rot  
Archives all judicially linked  
resources

30 law libraries will store  
archive copies

Diversity reduces the  
likelihood of the archive  
going fallow



[ABA Journal article on Perma \(Dec. 2013\)](#)

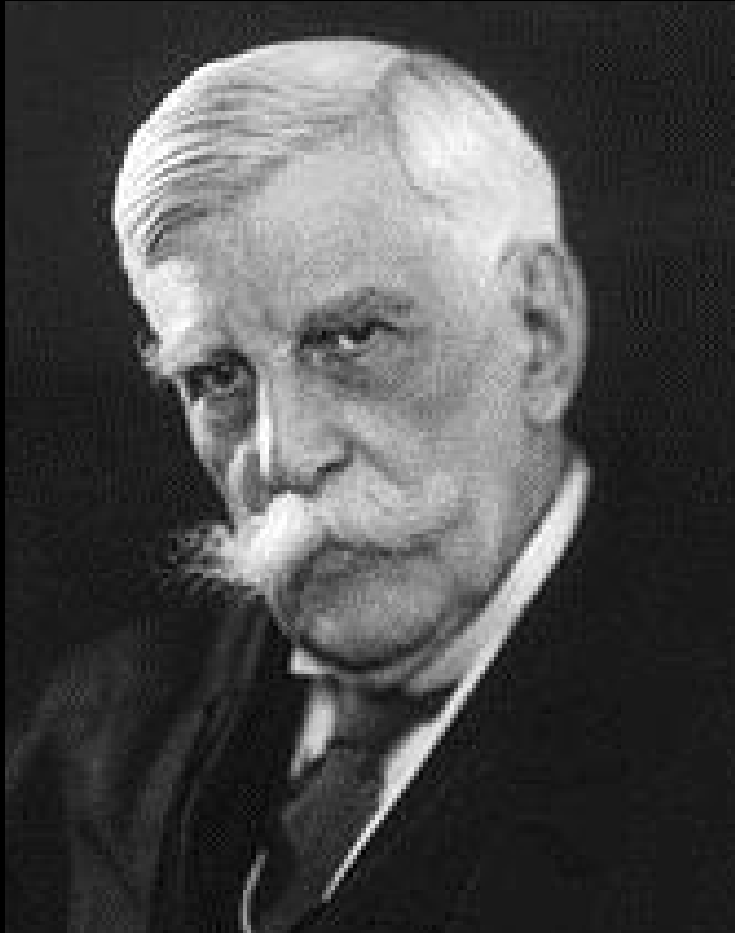


Effective advocacy in  
a technological world

Not superficial;  
this is advocacy



Of course.  
Substance is essential.



... but presentation matters.



# Dressing for Court



# Speaking to Courts



# Writing for Courts

NO. 04-5348RBL  
Michael B. Cole, et al.,  
Defendants. Notice of Appeal

I hereby am informing you that I  
appealing the asshole Ronald B. Leighton's  
decision in this matter.  
you have been hereby served Notice,  
you're not getting away with this shit that  
easy.

signed this 10<sup>th</sup> day of July 2006

George C. Swinger Jr

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, d/b/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\*  
Harlem State Office Building,  
Suite 912  
163 West 125th St.  
New York, NY 10027  
212-222-7315  
doutram@nysenate.gov

AMY LAVINE  
ALBANY LAW SCHOOL  
80 New Scotland Ave.  
Albany, NY 12208  
518-472-5849  
alavine@albanylaw.edu

\*Counsel of Record  
Counsel for Amicus Curiae

---

COCKLE LAW BRIEF PRINTING CO. (800) 225-6064  
OR CALL COLLECT (402) 942-2851



Lemonade Stand  
50 cents

In the  
**Supreme Court of the United States**

OCTOBER TERM, 2014

---

DOE, ET. AL,

*Petitioners,*

vs.

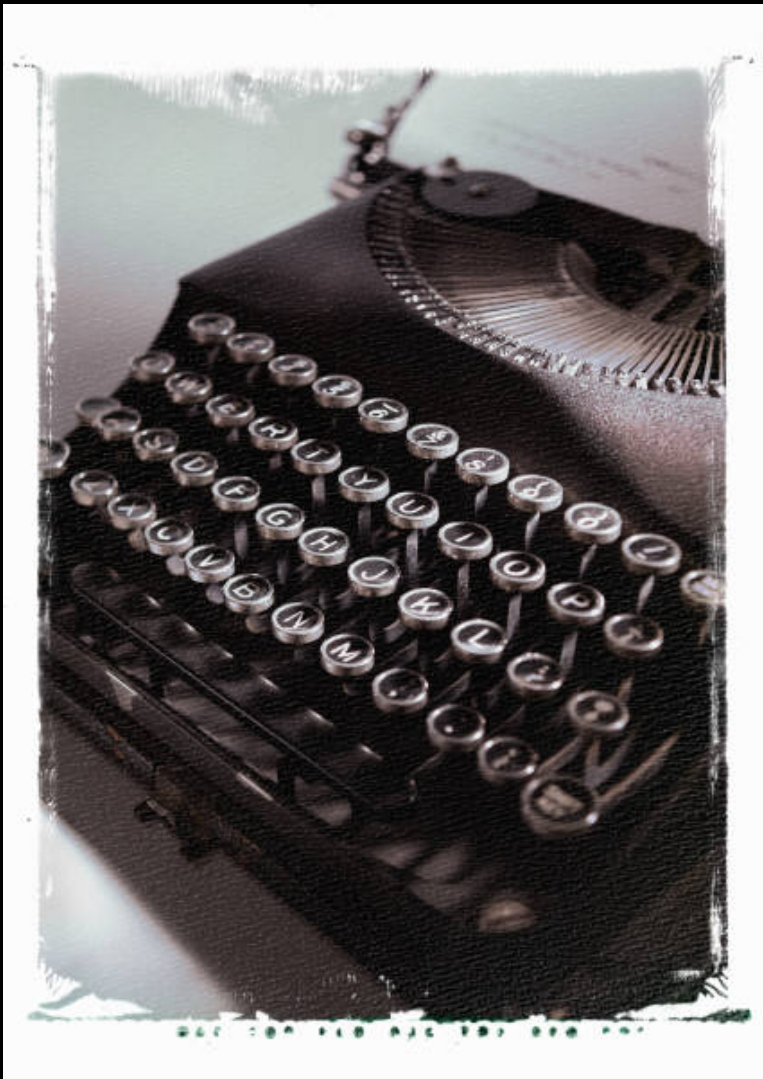
FLORIDA,

*Respondent.*

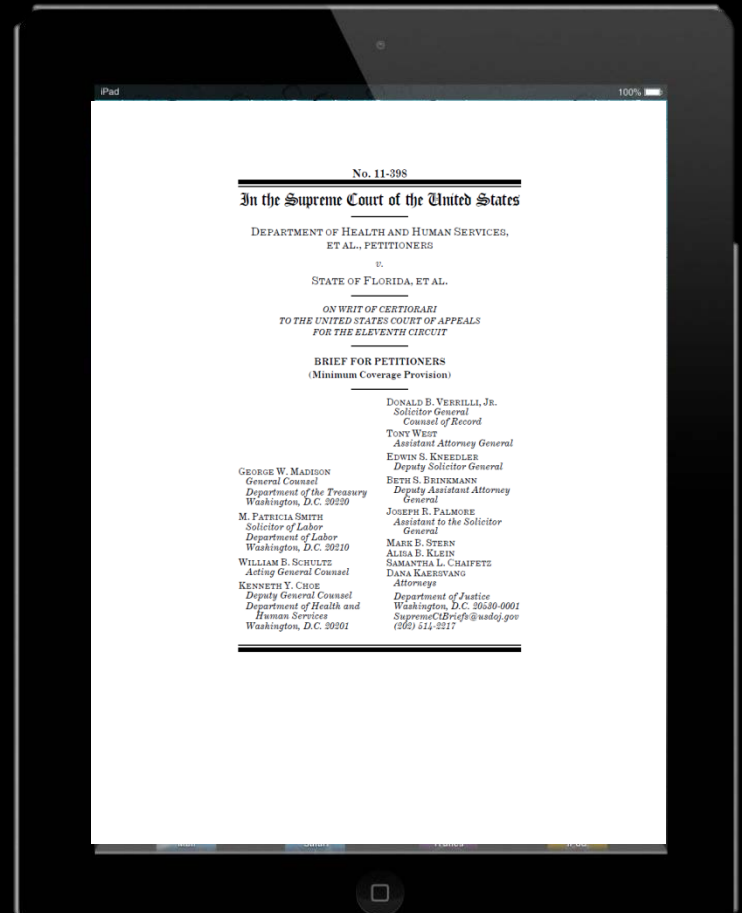
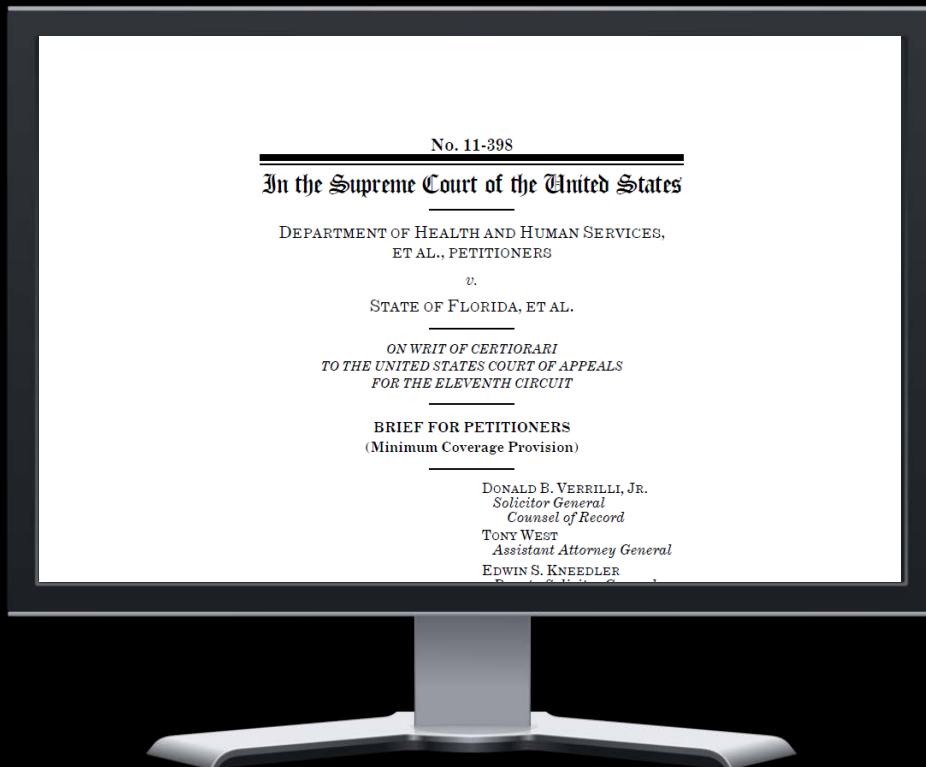
---

ON WRIT OF CERTIORARI TO THE  
SUPREME COURT OF FLORIDA

# Writing for **paper**



# Writing for screens



# Mid-Century Workflow

Thurs Eve Review  
24 March 1960

Tonight we commence the final 8 week stretch of our current season, ~~and~~ 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 two weeks we are commemorating Puccini's 250<sup>th</sup> birthday, and simultaneously we are looking at three aspects of 20<sup>th</sup> century problems in music. The four<sup>th</sup> week we shall give an special Easter concert - The St. Louis Mass of Beethoven. The Brunelwaite concert to complete our long Mahler festival with his immortal performance of Das Lied von der Erde. The 6<sup>th</sup> & 7<sup>th</sup> weeks are devoted to music for the theatre - ballet & opera, respectively. And the final 8<sup>th</sup> week will have a special program appropriate to our last subscription 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 Puccini festival concerts: one on Monday, on April 4<sup>th</sup> with Mrs. T. G. Kelly, & one on May 15<sup>th</sup> - The Beethoven 9<sup>th</sup> symphony. To say nothing of our two televised young people's programs, one this coming Saturday, on universal instruments, & the other on April 23<sup>rd</sup>, which will present Ann Conlan's high school opera, The Second Hurricane.

If you ever chance to wonder how we manage to put these



# 1980s Workflow

Thurs Eve Preview  
24 March 1980

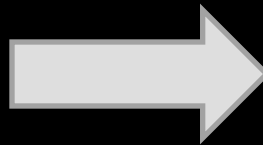
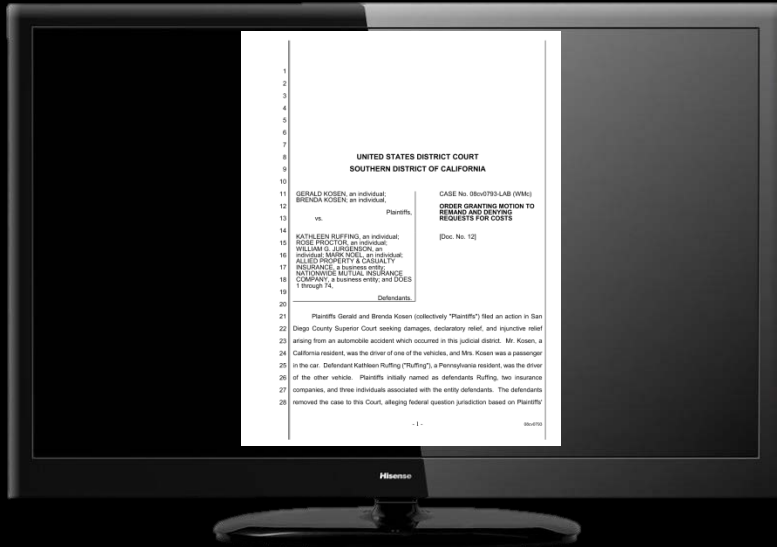
Tonight we commence the final 8 week stretch of our current season, ~~and~~ a stretch replete with cycles, festivals, & special events! In fact, there are so many of these that it takes a certain amount of real concentration to keep track of them. During the next three weeks we are commemorating Puccini's 250<sup>th</sup> birthday, and simultaneously we are looking at three aspects of 20<sup>th</sup> century problems in music. The four<sup>th</sup> week we shall give an special Easter concert - The St. Ann Mass of Beethoven. The Bremen Opera comes to complete our long Mahler festival with his immortal performance of Das Lied von der Erde. The 6<sup>th</sup> & 7<sup>th</sup> weeks are devoted to music for the Theatre - ballet & opera, respectively. And the final 8<sup>th</sup> week will have a special program appropriate to our last subscription 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 Puccini festival concerts: one on Monday, on April 4<sup>th</sup> with Mrs. T. G. Kelly, & one on May 15<sup>th</sup> - The Beethoven 9<sup>th</sup> Symphony, To say nothing of our two televised young people's programs, one this coming Saturday, on universal instruments, & the other on April 23<sup>rd</sup>, which will present Franck's high school opera, The Second Hurricane.

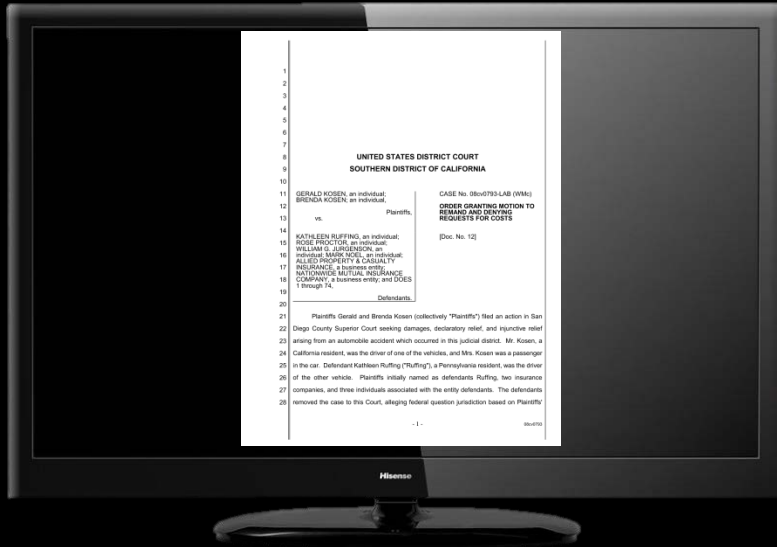
If you ever chance to wonder how we manage to pre-



# 1990s – 2000s Workflow

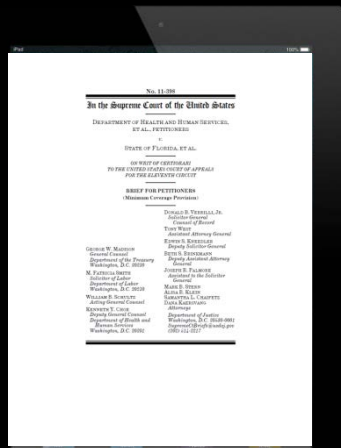


# 2010s Workflow





# Courts issuing iPads



# 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



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

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



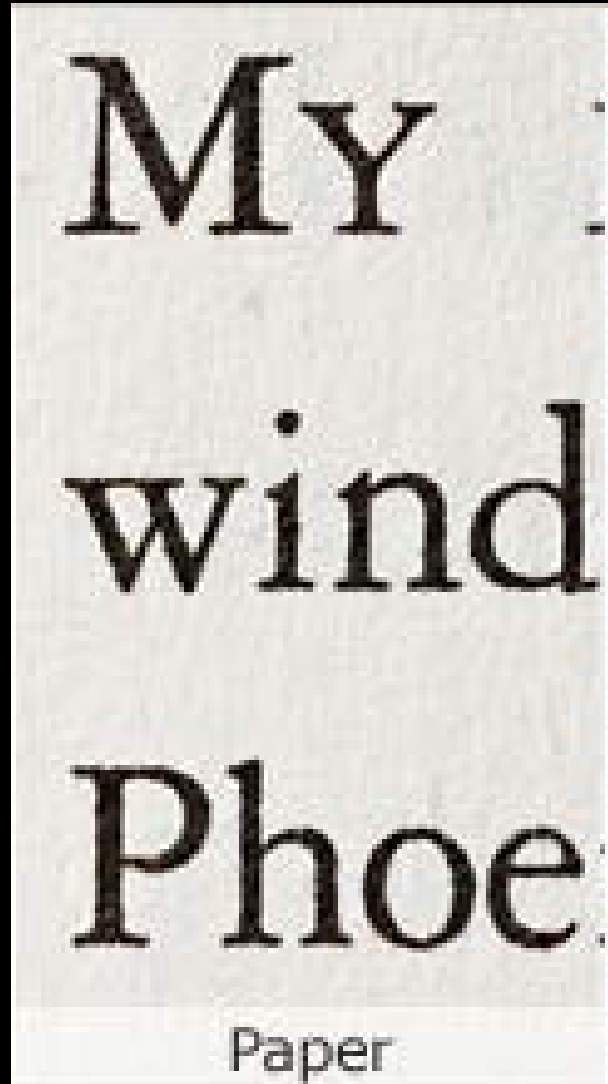


“I can’t read on screens!”

There's a reason

... that's **less true** today.

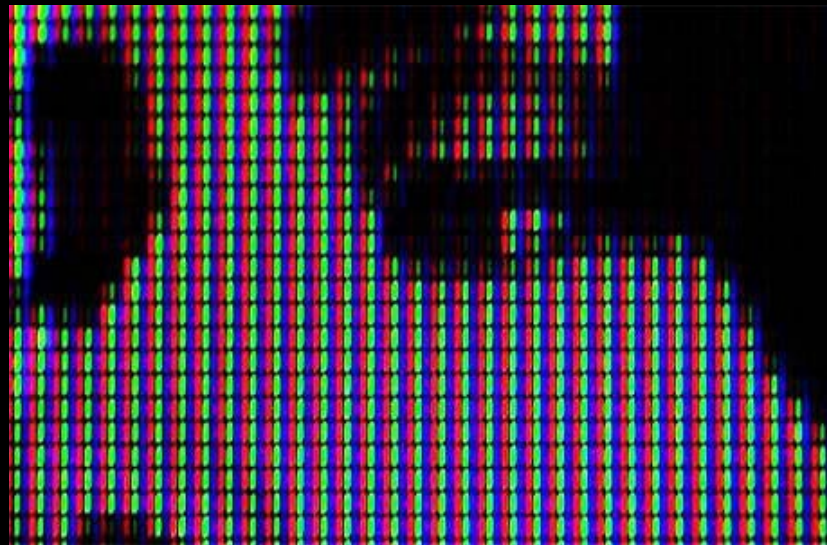
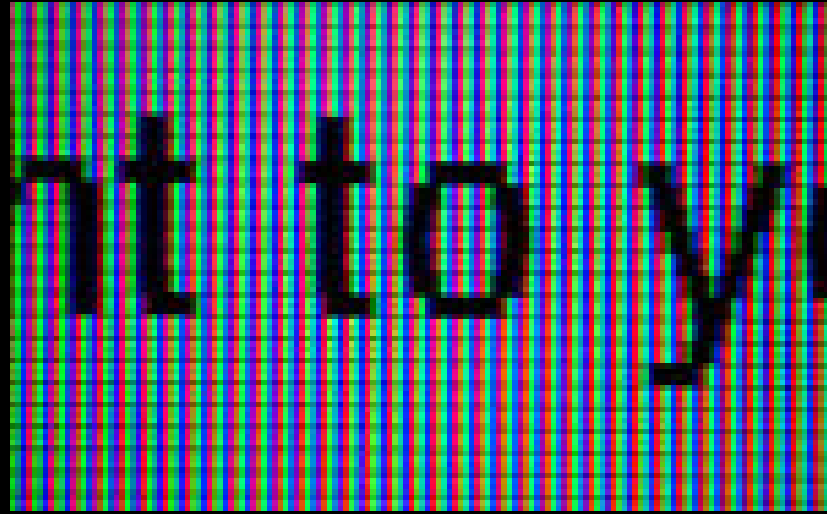
Paper = 300-600 ppi  
(points per inch)







CRT = 60 ppi





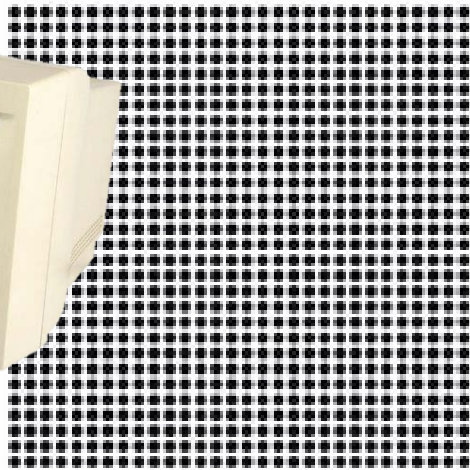


LCD = 110 ppi



# Over Time: Better PPI

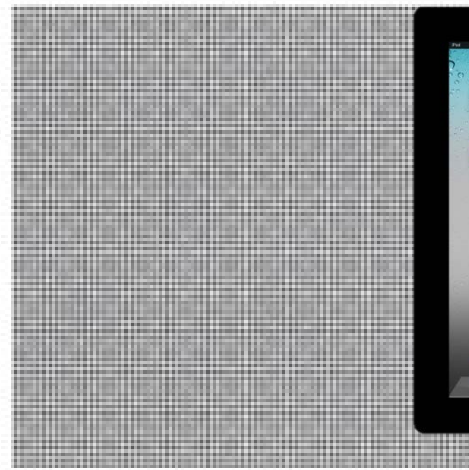
72 dots (pixels) in 1 inch



**72 dpi**

72 dots per-inch

300 dots (pixels) in 1 inch



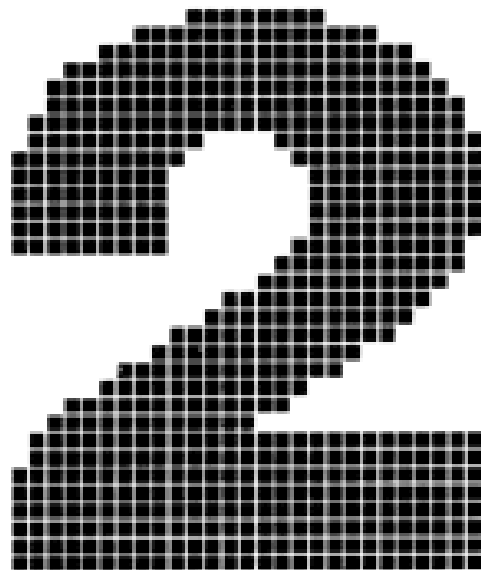
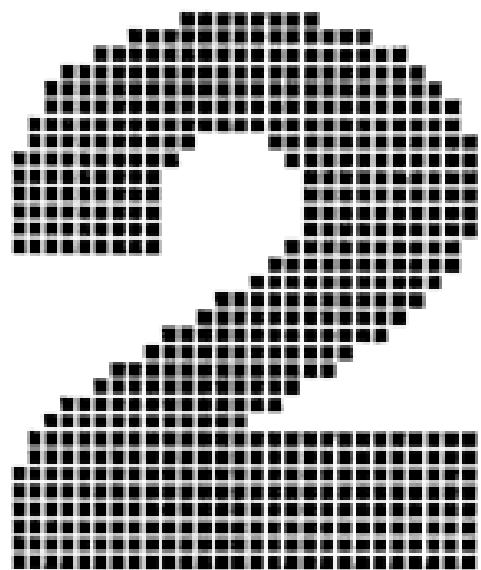
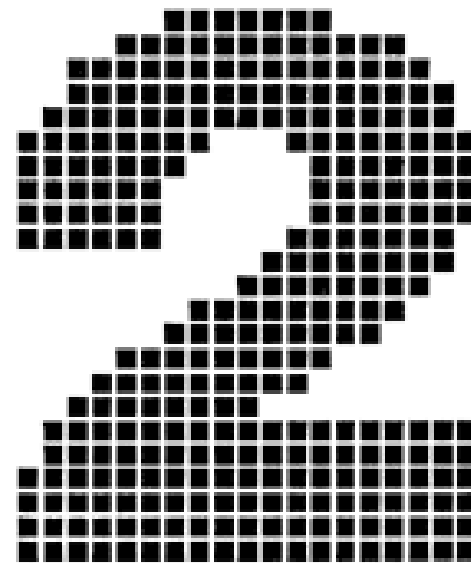
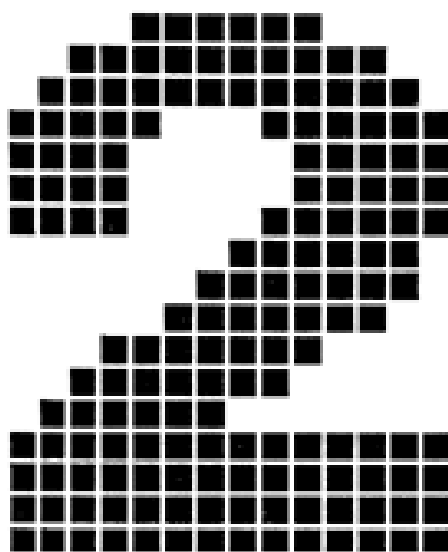
**300 dpi**

300 dots per-inch





2



MY N

THE

seve

E Ink

My :

wind

Phoe:

Paper

MY T

rolle

perfe

LCD

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



# Times New Roman (1932)

The  Times

LONDON, WEDNESDAY, SEPTEMBER 29, 1932

THE



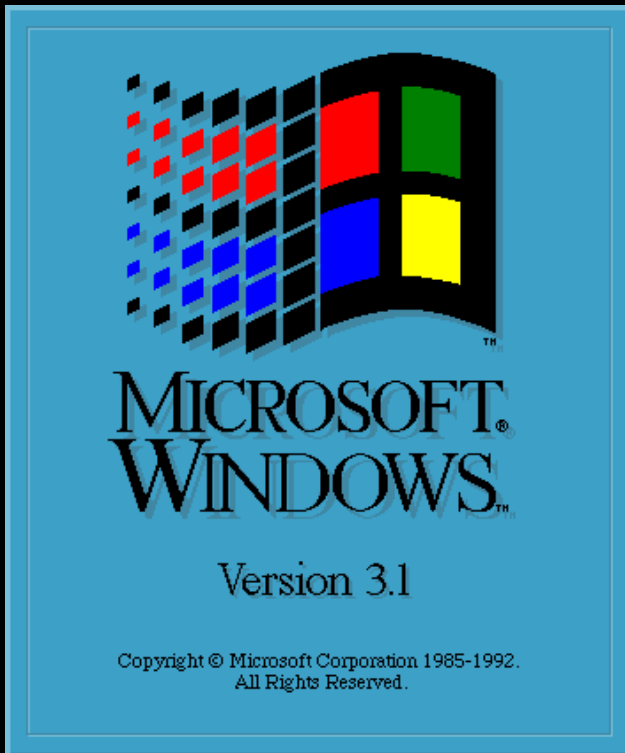
TIMES

LONDON MONDAY OCTOBER 3 1932

EFGHIJKLMNOPQRSTUVWXYZ  
ghijklmnopqrstuvwxyz

Condensed = more text per page

# Default in 1992



# Default in 2007



## Calibri

ABCDabcd - Regular

**ABCDabcd - Bold**

*ABCDabcd - Italic*

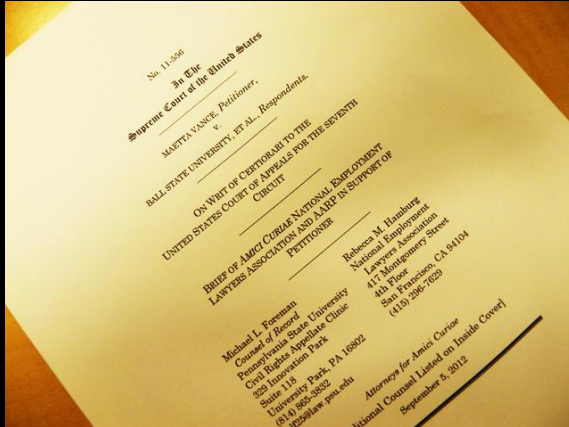
***ABCDabcd - Bold Italic***

Sans Serif

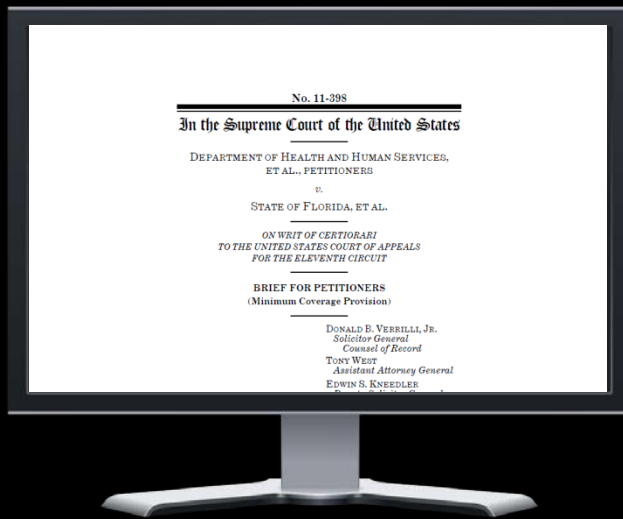
Serif



# Conventional Wisdom

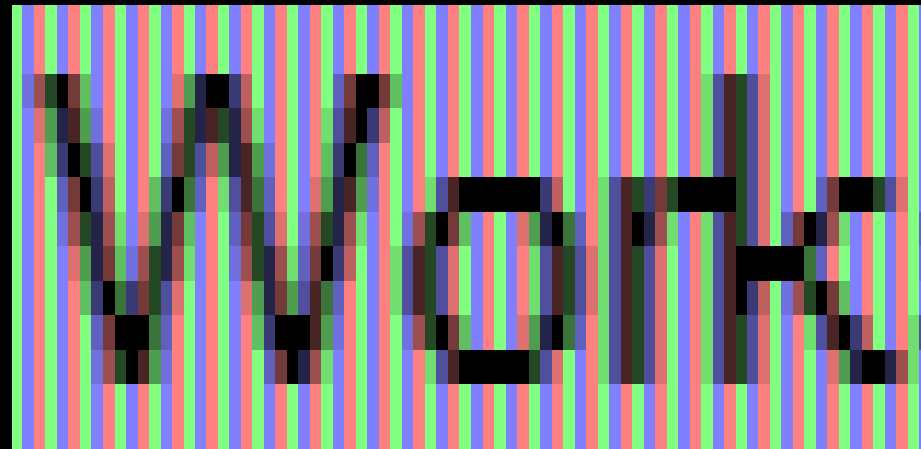


Paper = **Serif**  
(e.g., Book Antiqua)



Screens = **Sans Serif**  
(e.g., Arial)

wind





# 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*



Jakob Nielsen  
Lauded usability expert



## Conventional Screen Usability advice:

“stick to sans-serif”

Screens are “too **lousy** to render **serifs** properly”

Letters blur

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**.”

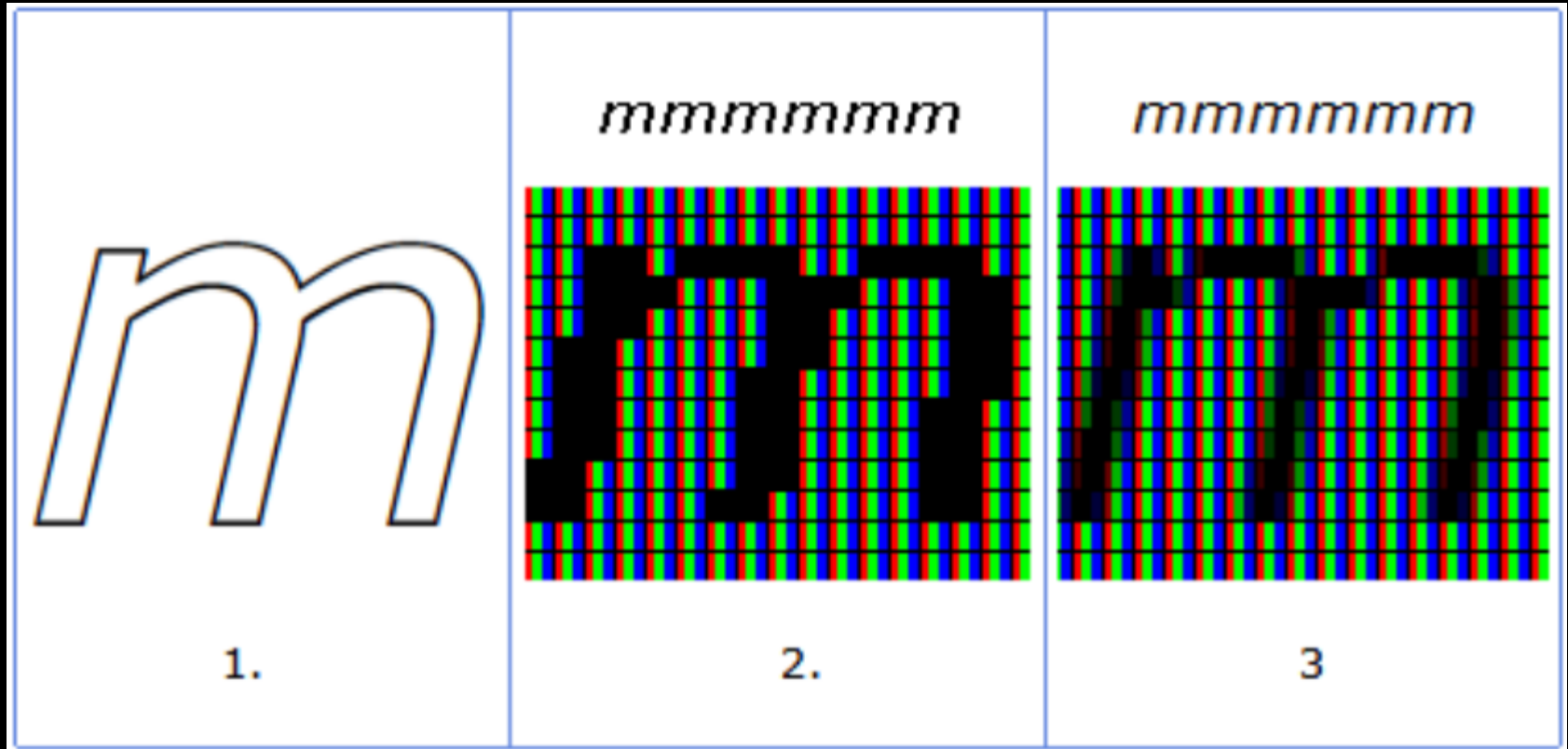


Joe Friend  
Microsoft

“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

# Fonts Designed for ClearType

## 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 boxing wizards jump quickly

*The five boxing wizards jump quickly*

**The five boxing wizards jump quickly**

*The five boxing wizards jump quickly*

## 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*

Serif

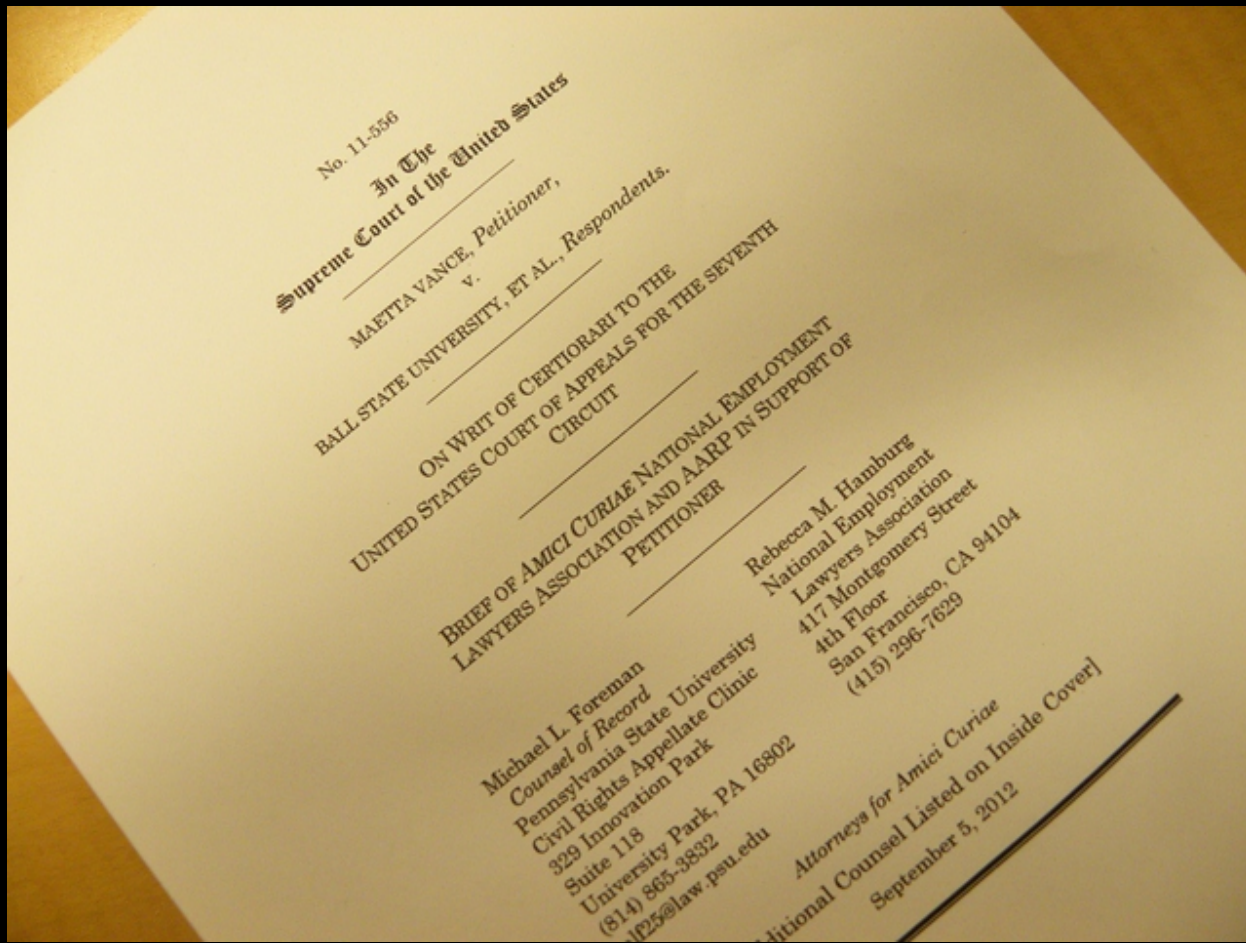
Sans Serif



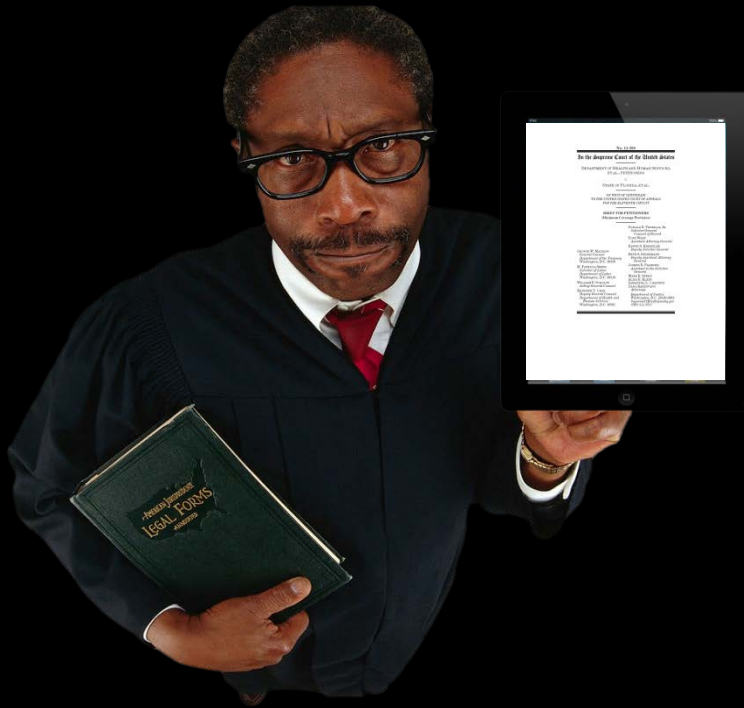
Adobe

PDFs have similar tech

Dis Disk

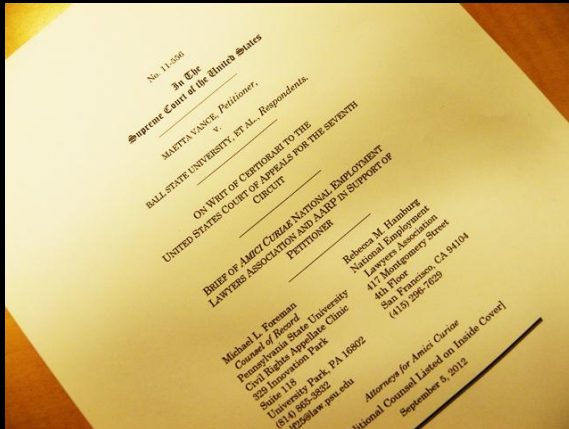


Lawyers currently write for paper



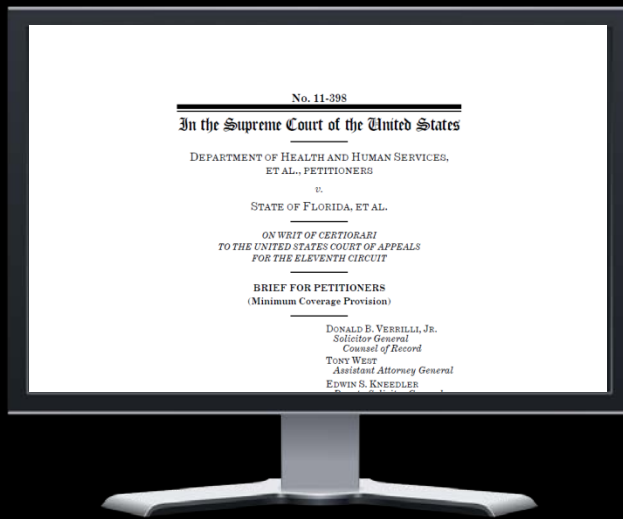
... for judges and clerks  
who read on screens.

# So which do you choose?



Serif?

(e.g., Book Antiqua)



Sans Serif?

(e.g., Arial)

# 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 boxing wizards jump quickly

*The five boxing wizards jump quickly*

**The five boxing wizards jump quickly**

*The five boxing wizards jump quickly*



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



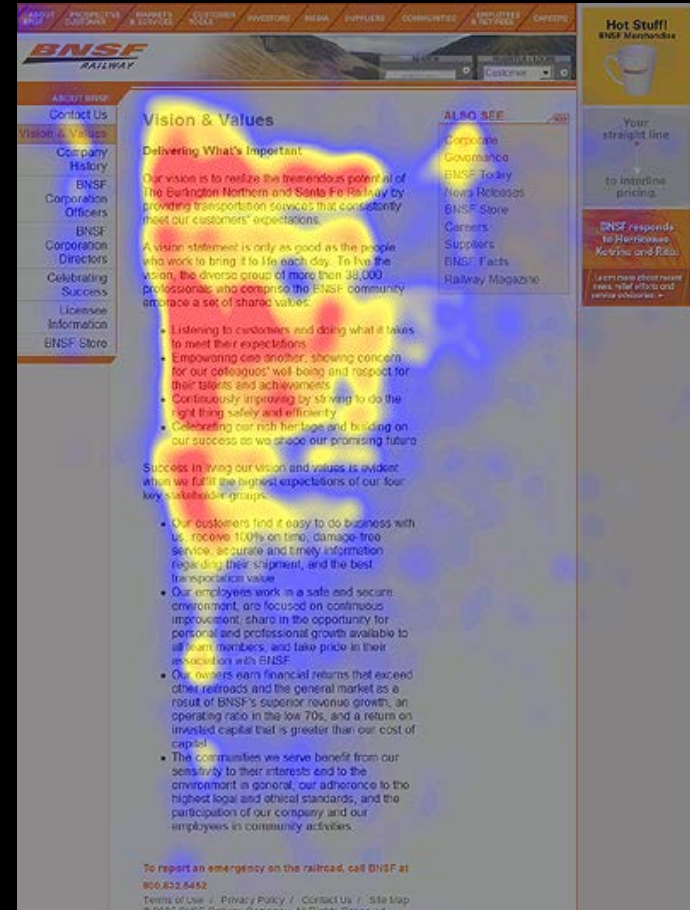
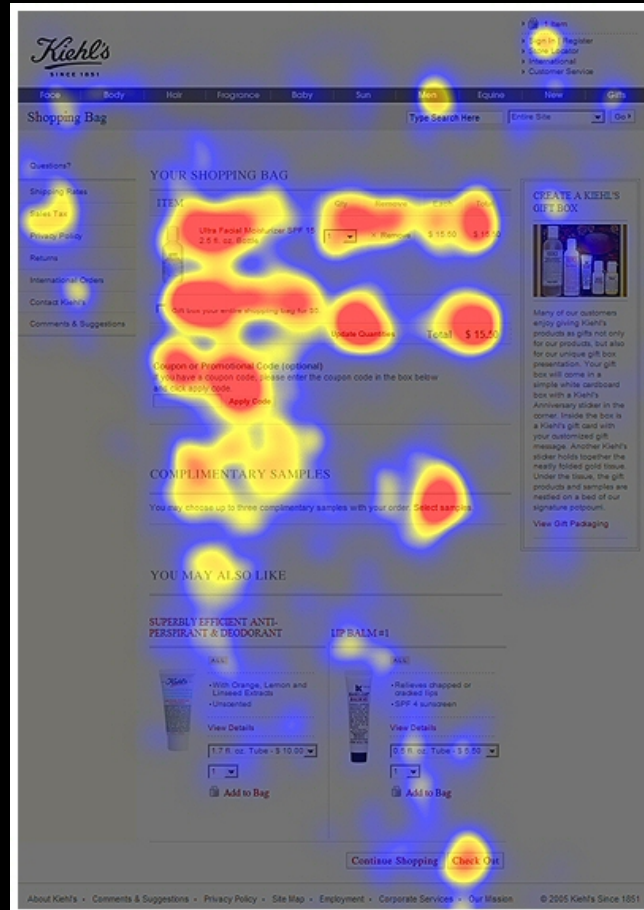
Shifting culture



# How do we read Websites?



# Eye-tracking studies



# F Patterns

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

**Hot Stuff!**  
BNSF Merchandise

Your straight line  
to interline pricing.

BNSF responds to Hurricanes Katrina and Rita  
Learn more about recent relief efforts and service updates.

**BNSF RAILWAY**

**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

**ALSO SEE**

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

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

—Usability.gov

## 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 fulfil 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

“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

## 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 fulfil 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

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

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

—Usability.gov

## Vision & Values

### Delivering What's Important

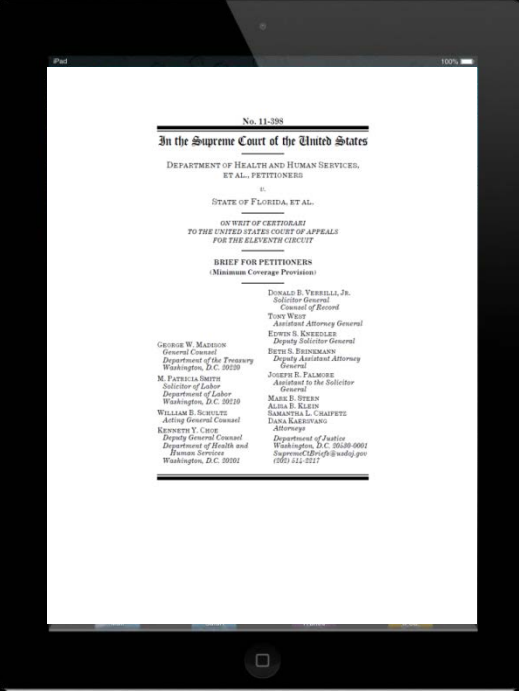
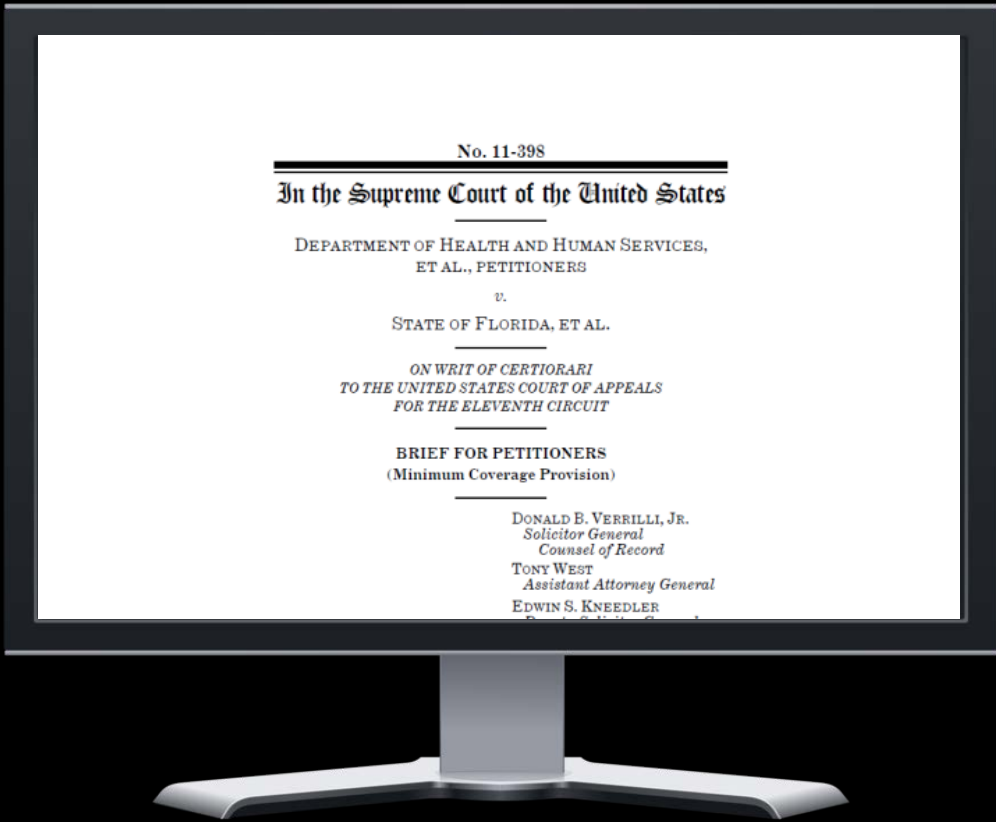
Our vision is to realize the tremendous potential of The Burlington Northern and Santa Fe Railway by providing transportation services that consistently meet our customers' expectations.

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 fulfil 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



# Changing Court Culture

# Judges are people





At home, judges read online.



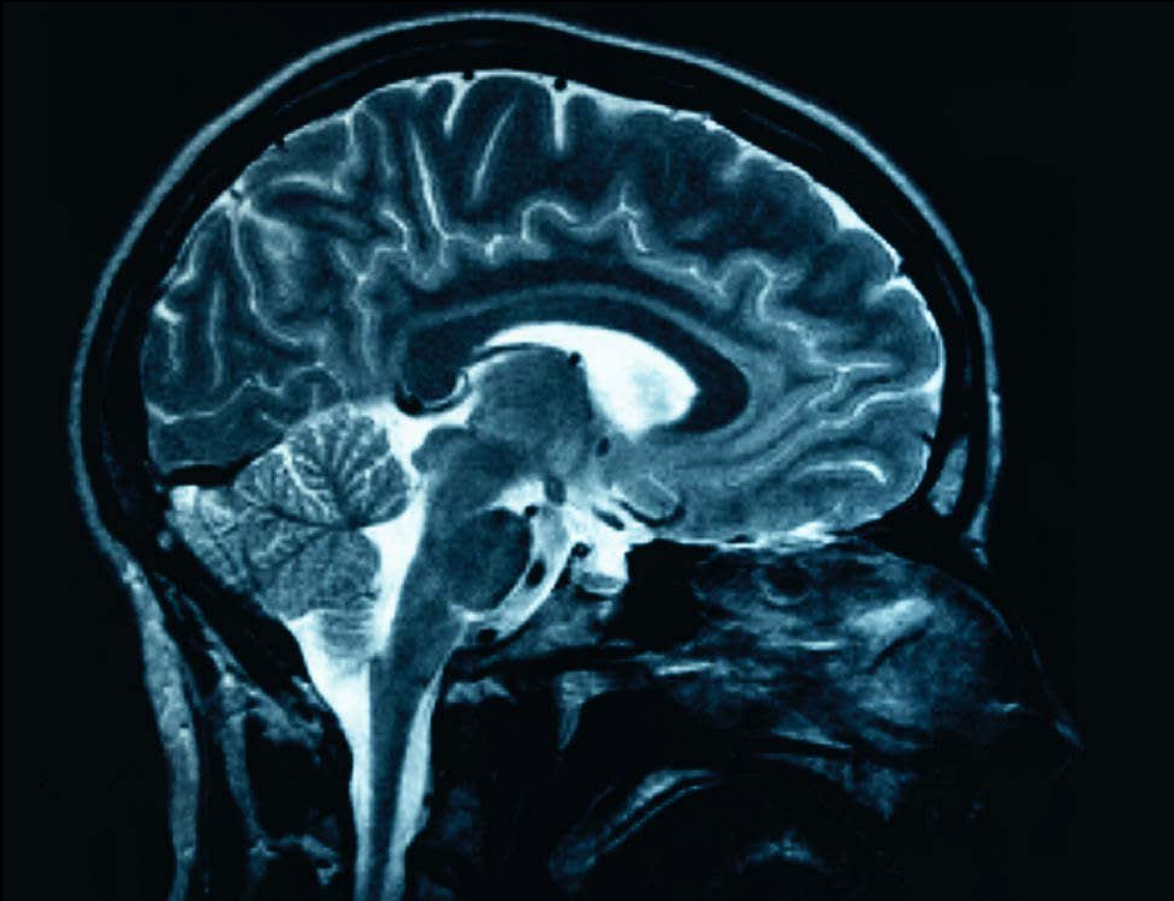
# More so for Millennial clerks



Home → Screen

Work → Screen

One keeps the same brain.



## Oklahoma Vows Review of Botched Execution

By Erik Eckholm, John Schwartz,  
www.nytimes.com

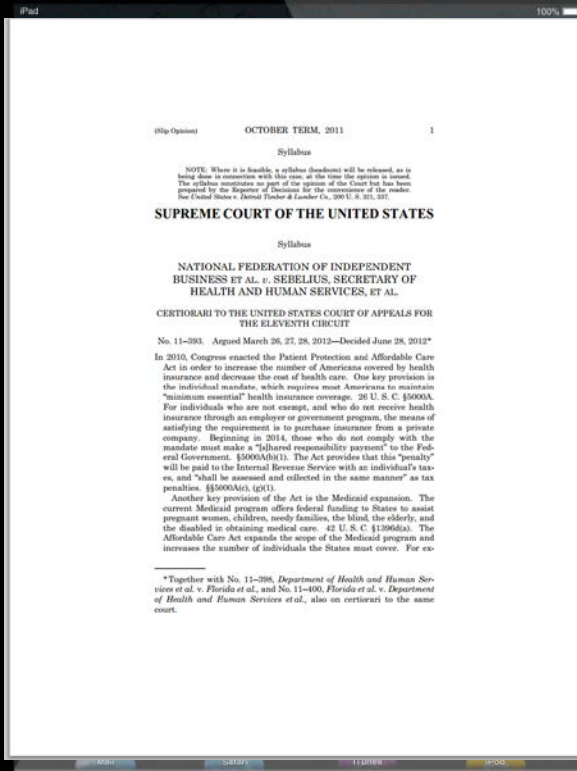
[View Original](#)

April 30th, 2014

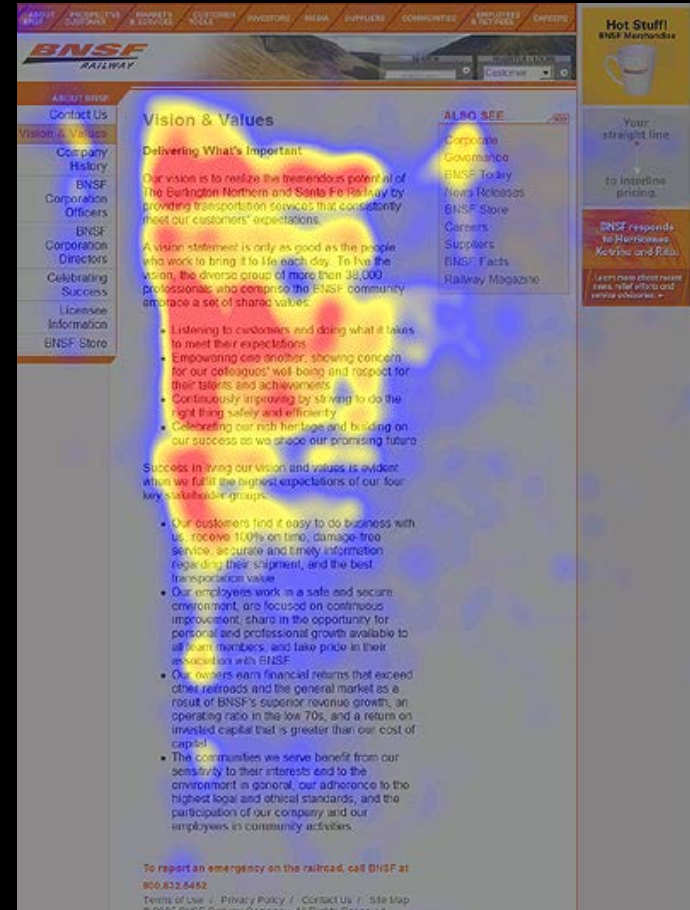
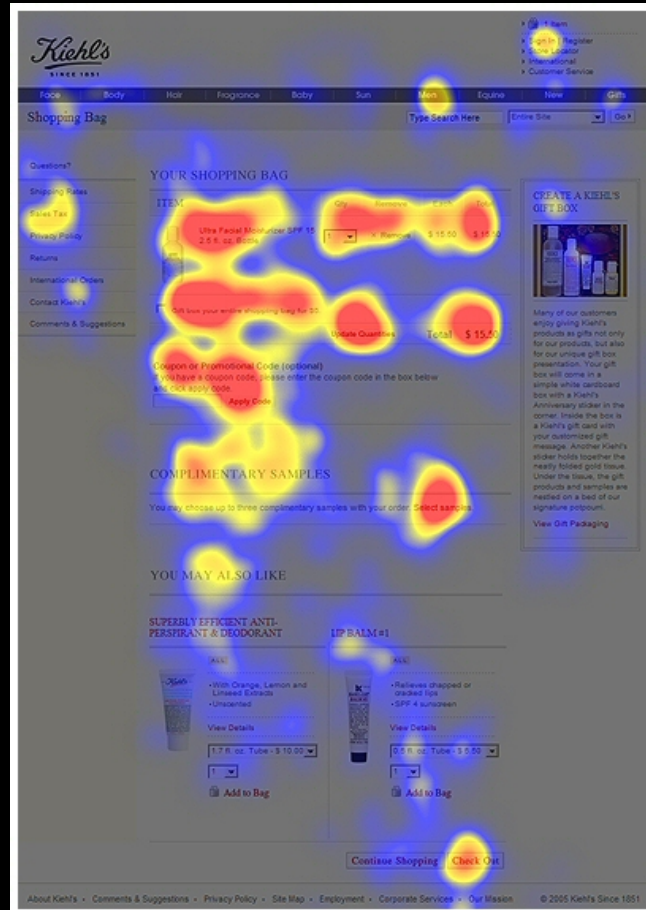


Jerry Massie, spokesman for the state Corrections Department, waited to be told Clayton D. Lockett had died. Credit John Clanton/Tulsa World  
*Photo by: John Clanton/Tulsa World*

McALESTER, Okla. — As Clayton D. Lockett writhed and groaned on the gurney on Tuesday night after a large dose of sedatives had apparently not been fully delivered, the Oklahoma chief of corrections rushed to call the governor and the attorney general. Something had gone disastrously



# Our screen habits have emerged



**Hot Stuff!**  
BNSF Merchandise

Your straight line  
to infinite  
prices.

BNSF responds to *Norfolk*, *Kelley* and *Rail*.

Learn more about how we're the world's most efficient service providers.

## 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 30,000 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, 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
- 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.

To report an emergency on the railroad, call BNSF at 800.832.4462

Terms of Use | Privacy Policy | Contact Us | Site Map  
© 2005 BNSF Railway Company. All Rights Reserved.

# General elimination of paper



# “Master copy” is electronic, not paper



Clerks draw from briefs.





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

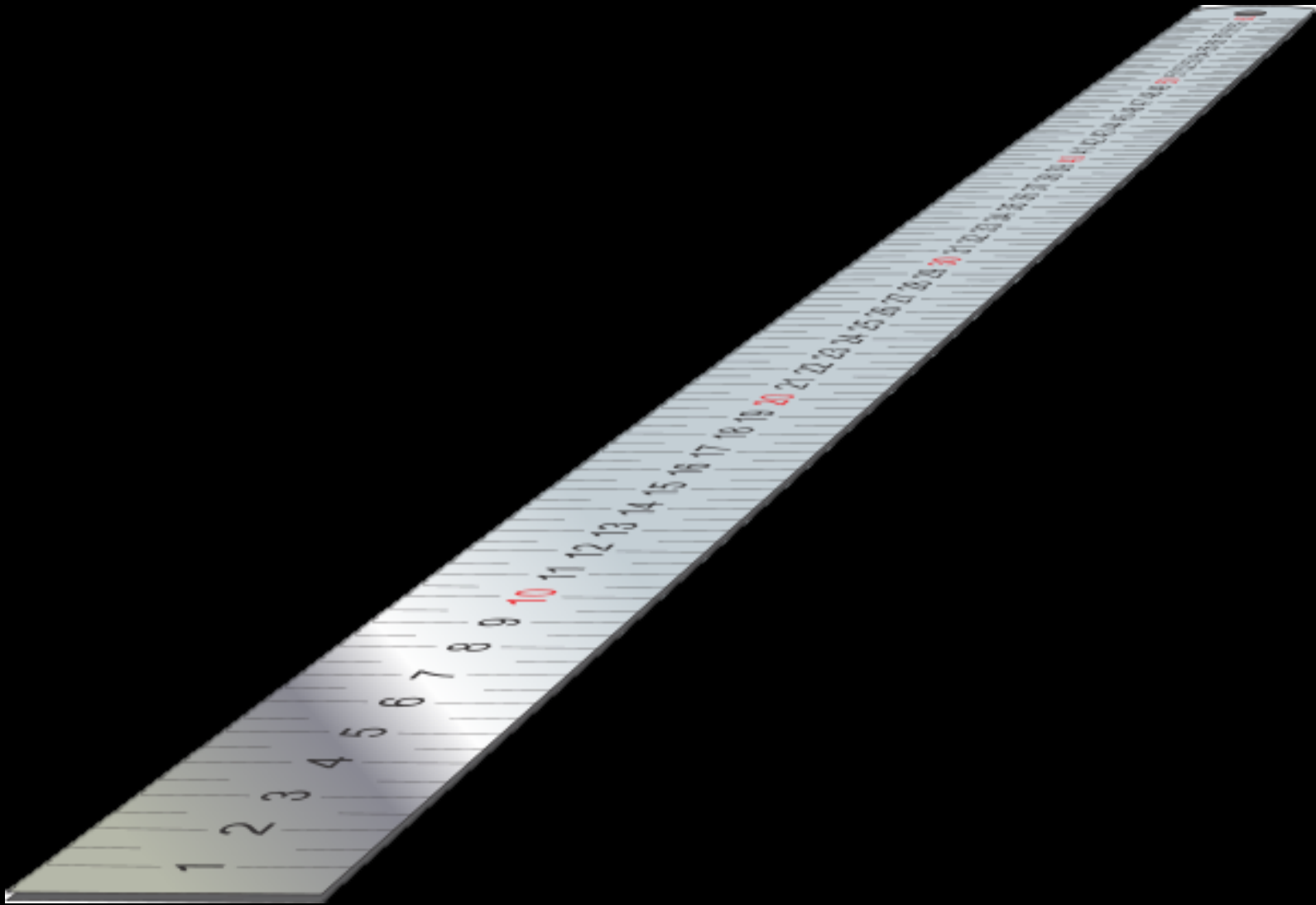
In 1939 the Yorkshire Parish Register Society, of which the Parish Register Section of the Yorkshire Archaeological Society is the successor (the publications having been issued in numerical sequence without any break) published as its Volume No. 108 the

“Scan to PDF” vs. “Print to PDF”



Typography:  
Don't take our word for it.

# Objective Standards, NOT Subjective Tastes.



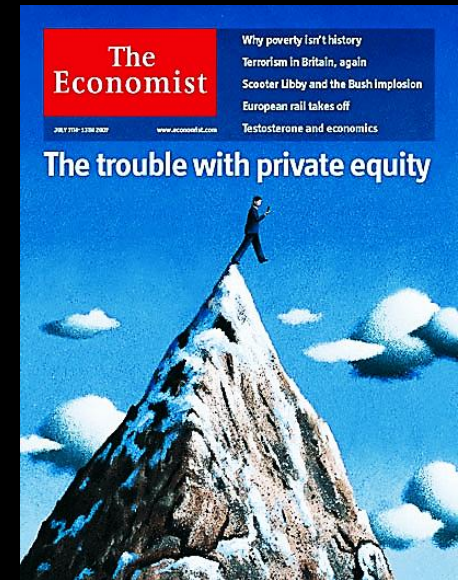
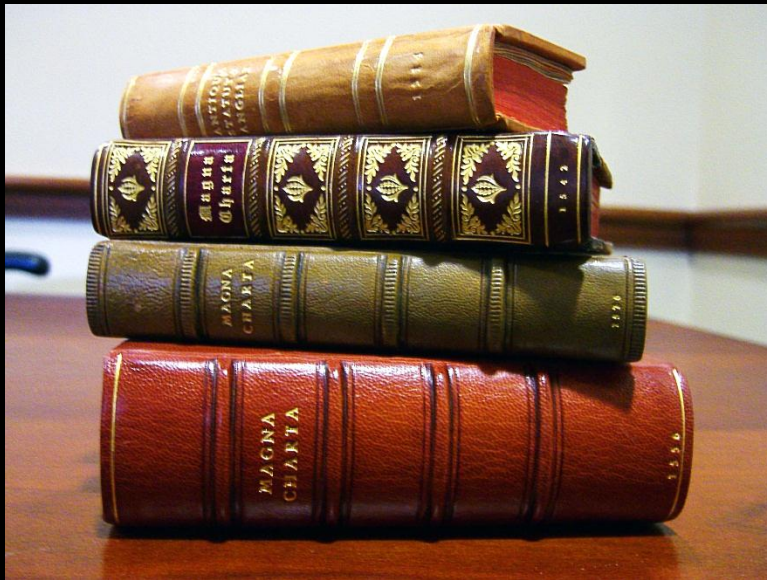
# Building cars? Ask professionals.



Mercedes-Benz

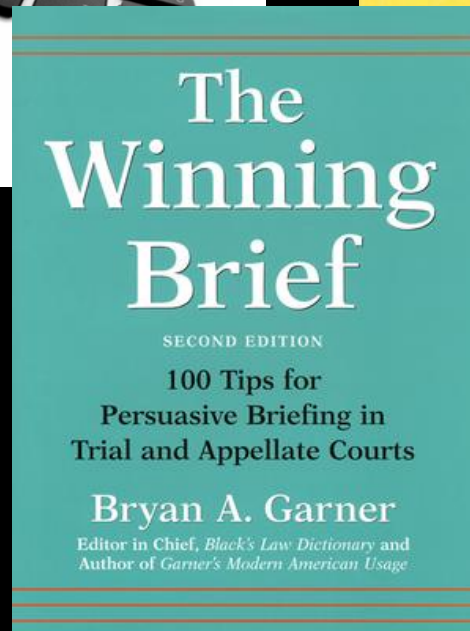
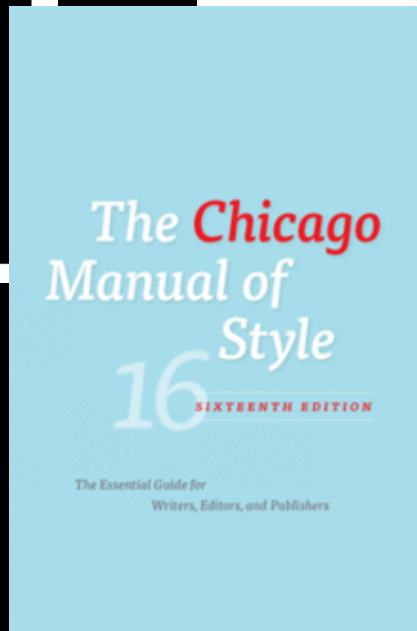
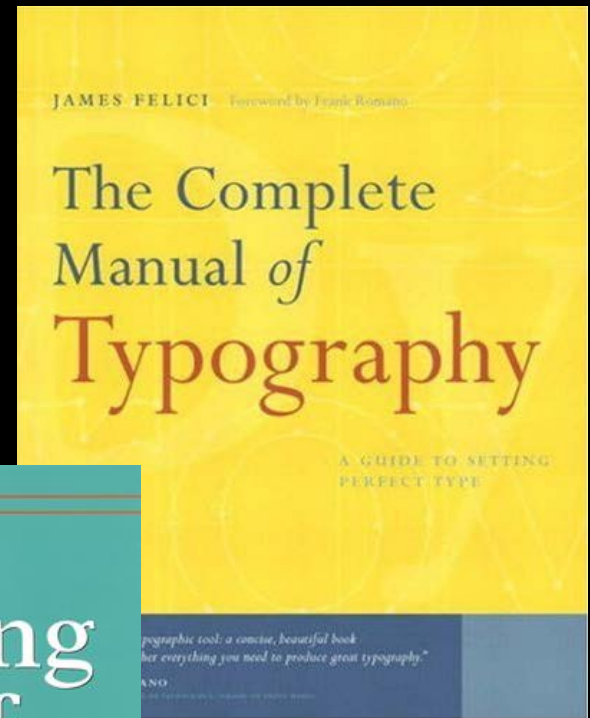
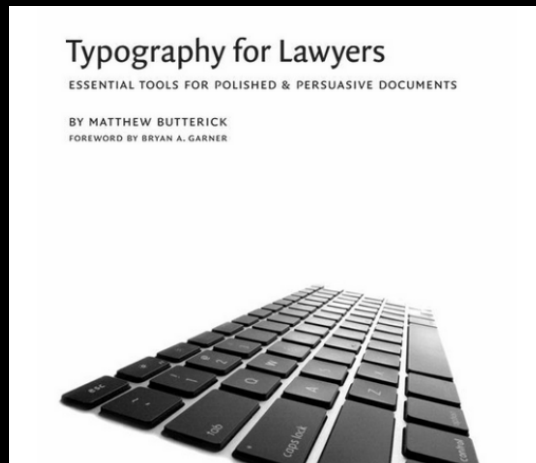
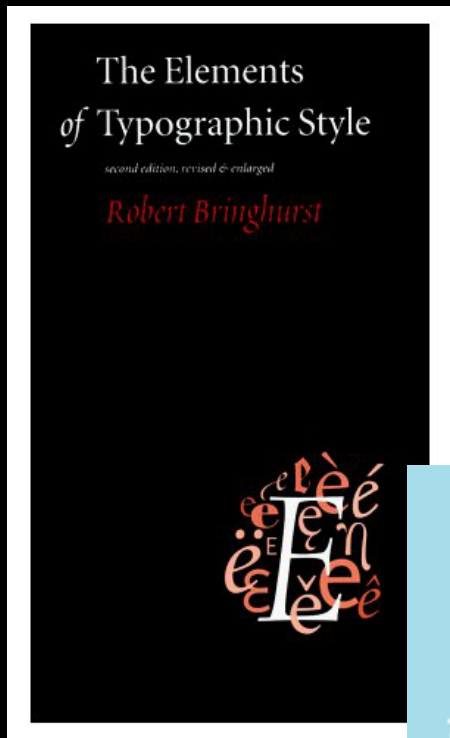


# Building documents?



The New York Times

# Ask professionals.



# Seventh Circuit



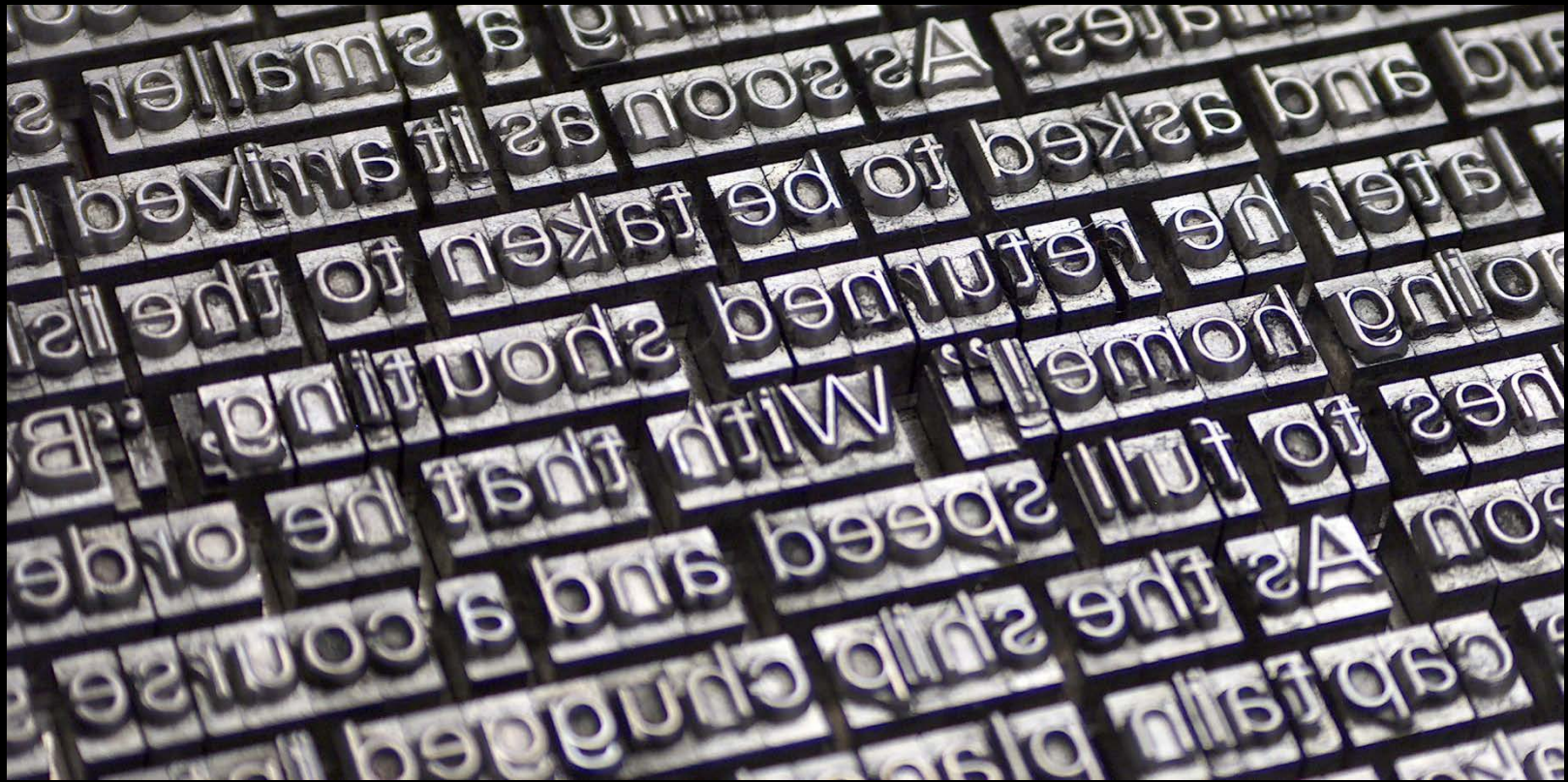
“This section of the handbook also includes some suggestions to help you make your submissions **more legible**—and thus more likely to be **grasped** and **retained**.”



# Eighth Circuit adopted by cross-reference



Cross-refers to the Seventh Circuit typography guide, which “contains much **useful information** about **type and format.**”



# Effective Written Advocacy Through Typography

# Traditional (and valid) typography considerations

... that most lawyers don't pay attention to:



# Font choice



Not choosing (keeping the default) is a choice.

# Times New Roman vs. better fonts



# Seventh Circuit

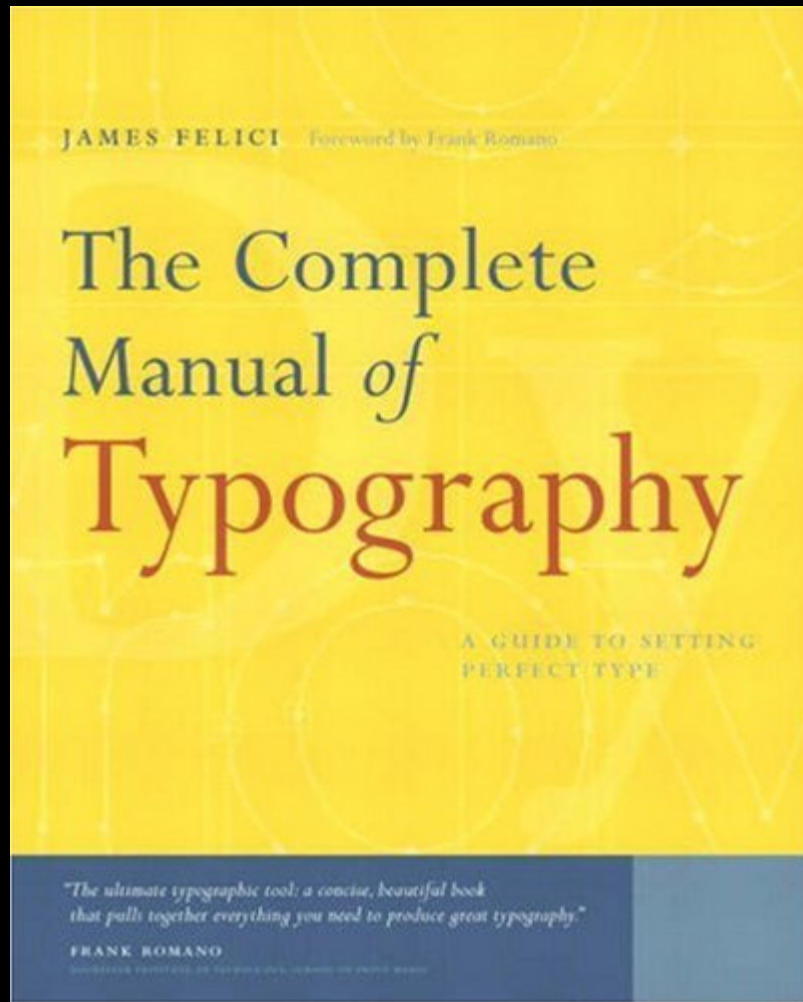


“Professional typographers **avoid** using **Times New Roman** for book-length (or **brief-length**) documents. This face was designed for newspapers, which are printed in **narrow columns** . . . .”

# Easterbrook



“Desktop publishing does not imply a license to use **ugly** or **inappropriate type** and **formatting** — and I assure you that **Times New Roman** is **utterly inappropriate** for long documents despite the fact that it is the default in some word processing programs. It is designed for **narrow columns** in newspapers, **not** for **briefs**.”



“Times is **not** a classic text face. Designed for use by the Times of London (as its new roman face, back in the 1930s), it has **comparatively narrow characters**, the better to compose well in the short lines of newspaper **columns.**”



# Typography for Lawyers

ESSENTIAL TOOLS FOR POLISHED & PERSUASIVE DOCUMENTS

BY MATTHEW BUTTERICK

FOREWORD BY BRYAN A. GARNER



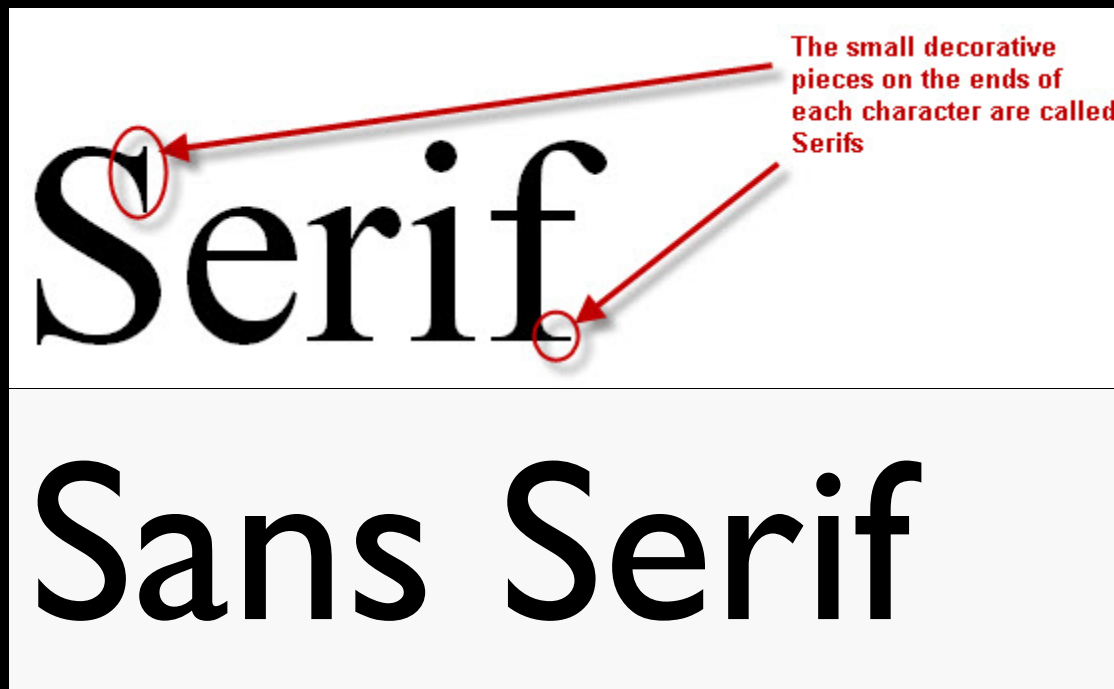
“If you have a choice about using **Times New Roman**, **please stop**. Use something else.... Did you make your business cards and letterhead at your local copy shop? No, you didn't, because you didn't want them to look **shoddy and cheap**. If you cared enough to avoid the copy shop, then you care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

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 ornare ante, ac  
egestas est urna 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 ornare ante, ac  
egestas est urna 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 ornare ante, ac  
egestas est urna 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

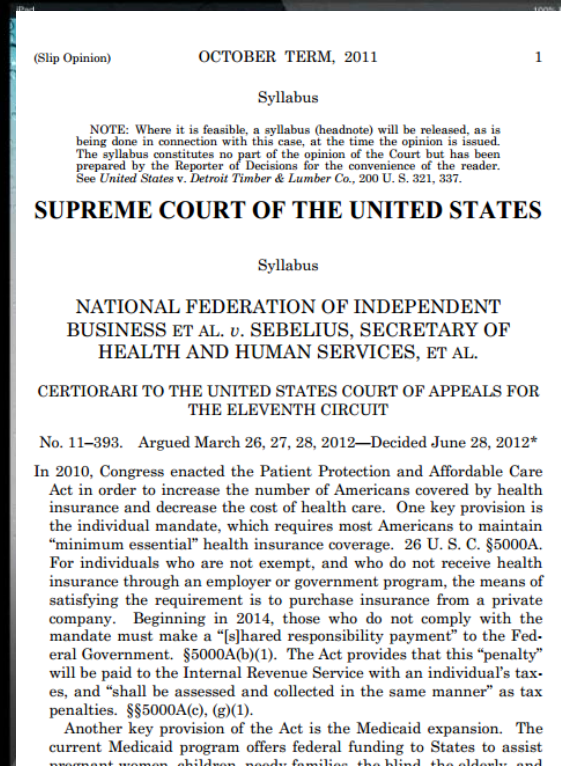


**“Double space” = 2.0x**

12 pt font = **24 pt** spacing

# Tablets are smaller.

More (readable) lines per page are better.



# Line Spacing: 1.2x to 1.45x

## Typography for Lawyers

ESSENTIAL TOOLS FOR POLISHED & PERSUASIVE DOCUMENTS

BY MATTHEW BUTTERICK  
FOREWORD BY BRYAN A. GARNER



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

14pt font = 17-20pt spacing

# Headings

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

Heading 2

## A. Eliminate Times New Roman

Heading 3

### 1. Seventh Circuit

Body Text

“Professional typographers avoid using Times New Roman (especially in brief-length) documents. This face was designed for new 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. 11–398, *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.*

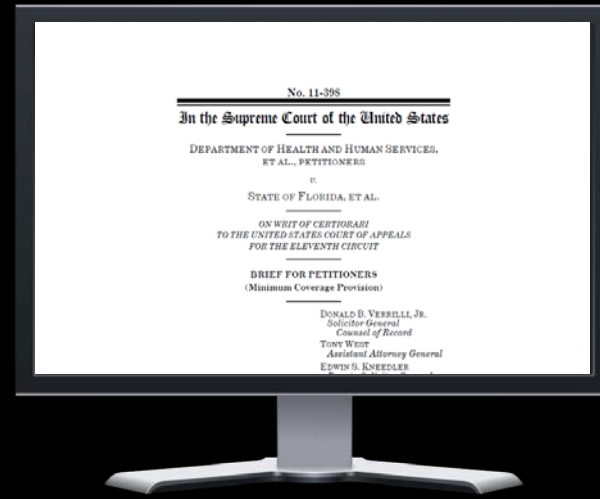
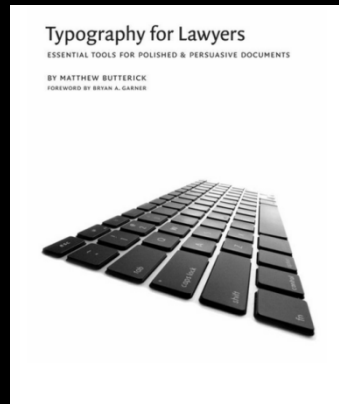
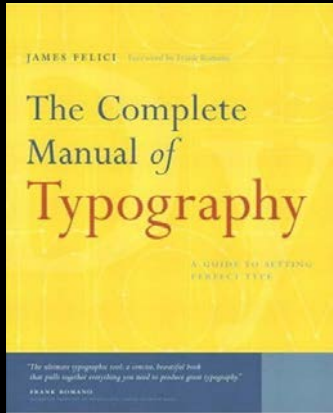
Appeal from the United States District Court  
for the Western District of Wisconsin.

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

(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. 11–398, *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.





# 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. 11–393. 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. 11–398, *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.

(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

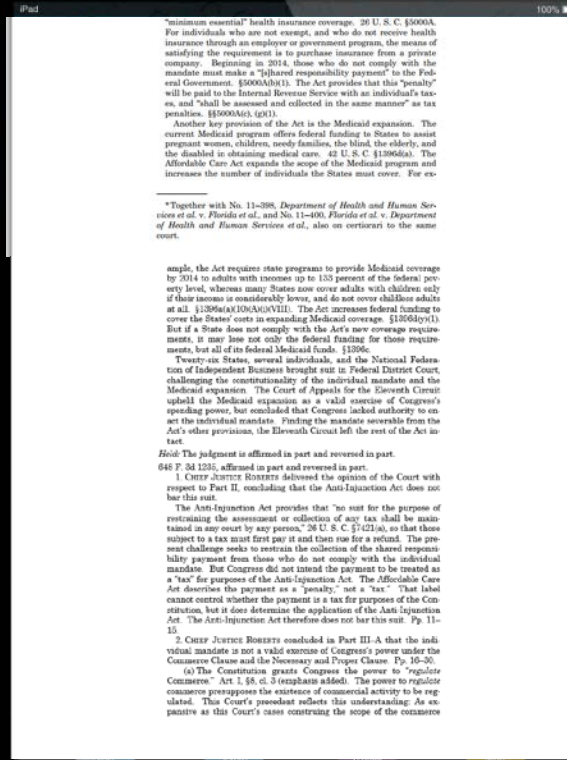
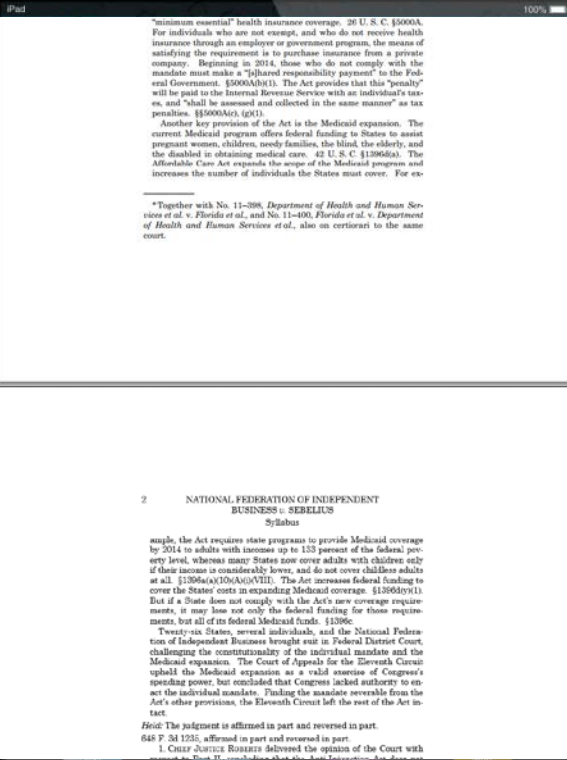
No. 11–393. Argued March 26, 27, 28, 2012—Decided June 28, 2012\*

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. 11–398, *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.

# Top/Bottom Margins



# Footnotes?

(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



Simplify

Resist the temptation to make more



You need less.



# Hyperlinks in briefs

Potentially thousands of pages (within page limits)



... but beware PDF/A



**PACER**

PUBLIC ACCESS TO COURT ELECTRONIC RECORDS

“The Judiciary is planning to change ... from PDF to PDF/A.”

“The **effect** on **hyperlinks** will vary depending on the **specific PDF writer** used to create or convert the document.”

Some Acrobat versions will **NOT** automatically open some hyperlinks.

[pacer.gov/announcements/general/pdfa.html](http://pacer.gov/announcements/general/pdfa.html)



# Documents cannot be so complex (rich) that the reader is lost

## AMERICAN LEGAL HISTORY

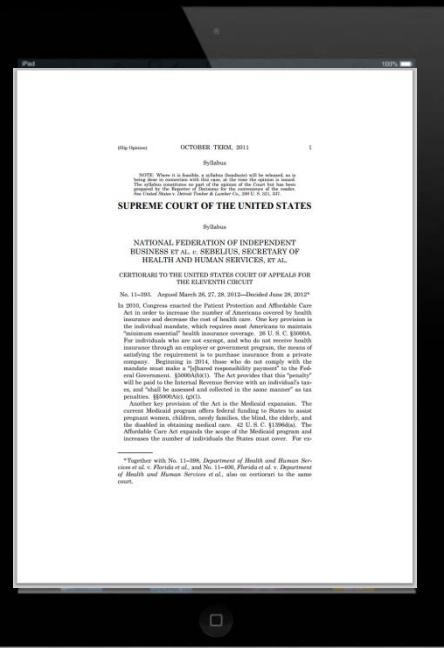
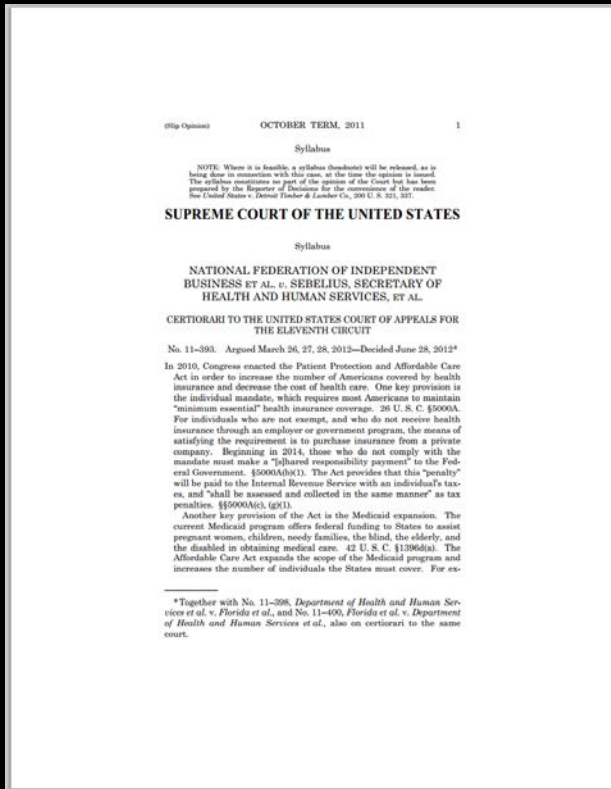
### I. The Beginnings of American Law, to 1760

#### a. Early Constitutionalism in America

- i. American colonists frequently asserted their “ancient rights” as English people
- ii. The English have a cultural tradition of protecting their rights against tyranny/ bad kings
- iii. Magna Carta 1215
  1. Response to King John. Barons, etc forced him to sign it. It was designed to protect the barons and their property. Later, became more of an idealized myth of the English people of how they love liberty/ hate tyranny
    - a. Became an underlying aspect of American Revolution
  2. The fact that the government (king) is subject to the law was a radical idea at the time
  3. Rights Established:
    - a. Right to trial by jury
    - b. Law of the land → rudimentary idea of due process
      - i. The law is an external check on the King

# Especially for screens

## Cannot as easily flip between pages



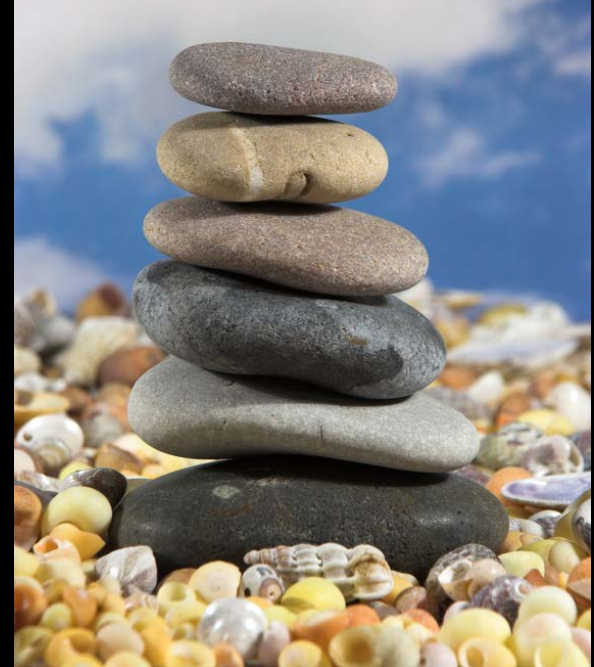
# Skimmable and digestible



Tech is not an excuse to bury the court



# E-discovery buries us; we shouldn't bury courts



# Great briefs vs. Winning Briefs



“The difference between the great brief and the winning brief is **not** one of **grammar** and **style**. ... The difference instead is **focus**.”

# Great briefs vs. Winning Briefs

“It requires an author to **choose** the **best argument** and then intentionally to omit other arguments.”



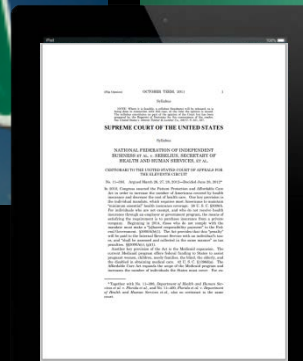
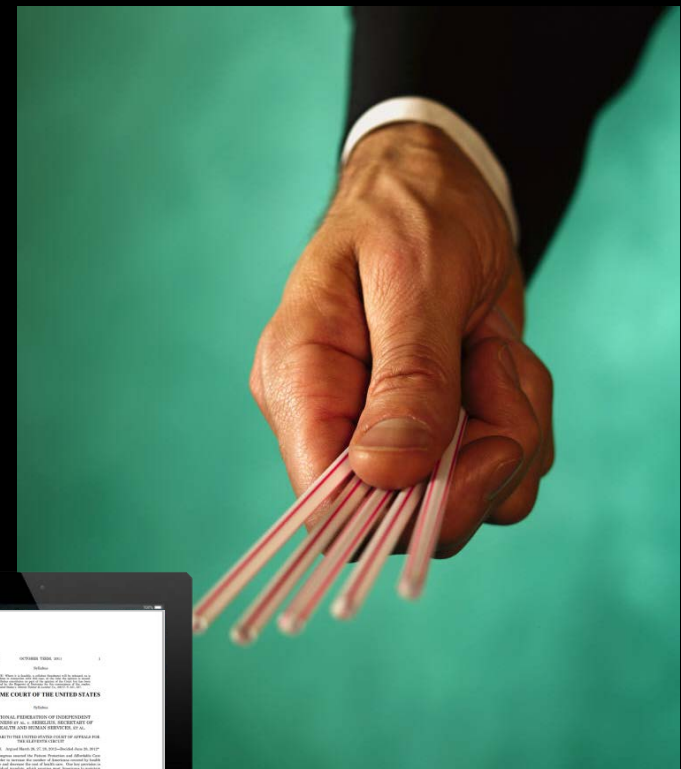
# ARTICLE: Great briefs vs. Winning Briefs



“Most judges are average. Most days are average. Most **winning briefs** are **aimed** at the **average judge** on the **average day**. Great briefs are not.”



# Those concepts apply doubly to screens



Questions?



FIN