WRITING FOR THE 21ST CENTURY READER

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I.   Introduction: our brains are being re-wired.

Something big is happening. Our brains are being re-wired.

It has been happening for the last 15 to 20 years. It happens whenever we read from an electronic screen instead of paper.

Computers bring us more information, faster. But reading from computer screens changes the way we read. It causes us to skim instead of reading line by line. It causes our eyes to jump around the page. It reduces our concentration and focus. And the more we read on computer screens, the more difficult it becomes to read long texts on paper.

Screen reading is coming to Texas appellate courts. Historically, judges have read briefs on paper. But the Texas appellate courts, and the Fifth Circuit, are in the process of switching to an all-electronic system. Everything – from briefs to the record to case law – will be available for reading on screens instead of paper.

This may be the biggest change in appellate practice in our lifetimes.

This paper argues these four points:

•**Technology has dramatically changed our reading environment.** Over the past 20 years, the reading and working environment for lawyers has changed significantly. As more lawyers move toward a paperless office, our reading environment changes. And as appellate courts go completely online in the next two years, judges' reading environment will change too.

•**The new reading environment is changing the way we read.** Reading on computer changes the way we read. The way our eyes move changes. The way our brain processes information changes. The habits and needs of a screen reader are very different from a paper reader.

•**Legal writers must adapt to the new style of reading in order to persuade.** Most legal briefs are designed for the old reading environment. If we want new readers to understand our arguments, we are going to have to change the way we write briefs.

•**The best tools for adapting to the new reader come from research on web usability**. To write for 21st century readers, the best techniques will not be

found in books of style, form, or grammar. Instead, they will be found in the lessons of web-usability research. This paper will suggest specific tools based on usability research to write for screen readers.

II.   Technology is changing our reading environment.

The environment in which lawyers read and work has changed dramatically in the last 20 years.

A.   20 years ago, almost all reading was from paper.

I worked as a law clerk in the mid-1980s. My workspace was the library.

No lawyers in the office had computers. Lawyers communicated by phone and letters. They drafted by hand, or more often, dictation. They read everything – letters, cases, briefs – on paper or in books.

In the mid-80s, most legal secretaries had switched from electric typewriters to computers. But computers were only used for word processing. Firms had no internet access and no e-mail.

The use of legal databases grew in the late 1980s. By 1990, most large firms had a few Westlaw or Lexis terminals. Lawyers could sign up to use the terminals, which were devoted solely to research. The terminals were connected to the database by modem, not through the internet.

Yet even in 1990, the law office was very different from today's office. Lawyers did not have access to the internet. They did not communicate by e-mail. Lawyers did very little reading on-screen. The computer was, for the most part, a replacement for the typewriter, and a tool of legal secretaries.

B.   Today: the law office is going paperless.

Since 1990, technology has completely changed lawyers' work habits.

We read and work electronically. We research primarily by computer. We draft by computer. And most of us do most of our reading on computer.

We communicate by e-mail. And as we carry e-mail devices with us outside the office, we become connected 24 hours a day.

As an illustration, consider how much time you spend reading on paper versus screens for these types of reading:

•**Communications**. Do you send and receive more communications by letter or e-mail?

•**Motions and briefs**. Do you read most motions or briefs in print on paper, or on a computer screen?

•**Cases and research**. Do you read cases printed on paper or on a computer screen?

•**Drafting**. When you draft and edit, are you reading and working on paper or on a computer?

•**News**. Do you read a printed newspaper or news on the internet?

•**Pleasure reading**. Do you spend more time reading books and magazines on paper or reading on the internet?

I recently posed these questions to a group of about 80 appellate lawyers. Of that group, 75% said that they now spend more time reading from screens than paper.

My own work environment is screen-based. My computer has two screens. I usually leave open at least five different windows. At any one moment, I might have open a collection of texts, such as:

1 - the e-mail in-box page,

2 - a scanned copy of an opponent's brief,

3 - a document with a chart of arguments and responses for my response brief,

4 - a few cases on Westlaw, and

5 - a blog about a new Supreme Court decision.

My cursor, and my eye, jump from one screen to the next. I call it multi-tasking.

Even when I am out of the office, I remain connected to screens. I read e-mails on a Blackberry, and news on my home computer.

I am not alone. Like many firms, my office is becoming paperless. We stopped purchasing reporters, relying almost exclusively on Westlaw for research. When we receive briefs, we scan them into a searchable PDF document. We rely less on physical files than the files of scanned documents on computer. I rarely send a letter. E-mail is so much easier and faster.

The allure of a paperless office is hard to resist. No one wants to return to the world before computers. Briefs were much harder to prepare with dictation and typewriters. A change in the "final" draft could require re-typing dozens of pages. It is just as hard to imagine research before Westlaw and Lexis. We had to rely on case summaries, digests, and our own memory of cases. Communication required letters and messengers or phone calls.

My dependance on technology was driven home when Hurricane Ike struck Houston. My home and office were without power for 5 days and internet for 7 days. I could communicate by phone. I could go to my office to work on paper. Yet everything I needed to do *required* a computer and an internet connection. After several days, I found a shopping mall with power that offered free wi-fi internet access. For a few days, the food court became my office.

It has become impossible to practice law without a computer.

C.   Courts also are going paperless.

Lawyers have been going paperless more quickly than judges. Historically, courts have lagged behind law firms in their use of technology. One reason may be that judges tend to be older than the average practitioner and rely less on new technology. Another reason is that courts have less funding for technology than many law firms. For many years after firms were using Windows, some Texas appellate courts continued to work in a DOS environment.

But make no mistake, the paperless chambers is coming. The Texas State Office of Court Administration recently announced that it is moving the entire appellate process from paper to computers.[1] By March 2010, Texas appellate courts will keep the clerk's record, reporter's record, the file, and all briefs on computer instead of paper.[2]

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[1]*See*   Posting   of John Council   to Tex Parte Blog, http://texaslawyer.typepad. com/texas_lawyer_blog/ 2009/07/texas-appeals-going- paperless.html (July 13, 2009).

[2]*Id*.

Similarly, the Fifth Circuit has announced that it is implementing an electronic filing system that will eventually require all filings to be made electronically.[3] This means that the court's files – including both the record and the brief – will be accessed solely on computer, not in file cabinets.

It remains to be seen whether judges will begin to do all their work and reading on screens. Yet, even before electronic filing has been implemented, it appears that most judges are moving to screen reading. Recently, I took an informal poll of seven justices of the Texas Supreme Court. Six of the seven justices read some briefs on screens. Similarly, in an informal poll of lawyers and justices working with the two Houston Courts of Appeals, more than two thirds indicated that they do more than 50 percent of their overall reading on screens.

D. 5 key features of the new working environment are changing the way we read.

Computers are an invaluable tool. But the use of computers has consequences. Throughout the history of man, the use of new tools has changed the thinking and habits of the tool user.

For instance, when Nietzche switched from writing with a pen to a typewriter in the mid-19th century, his writing style changed.[4] Nietzche theorized that "our writing equipment takes part in the forming of our thoughts.".[5]

Similarly, our brains are re-programmed by our "intellectual technologies."[6] For instance, with the use of mechanical clocks, humans changed their habits. In deciding when to eat, work, and sleep, "we stopped listening to our senses and started obeying the clock."[7]

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[3]U.S. Court of Appeals for the Fifth Circuit, *Notice of Proposed Amendments to Fifth Circuit Rules*, http://www.ca5.uscourts.gov/news/news/Notice%202009%20Proposed%20Changes.pdf.

[4]Nicholas Carr, *Is Google Making Us Stupid?*, Atlantic Monthly, July/August 2008, http://www.theatlantic.com/doc/200807/google.

[5]*Id*.

[6]*Id*.

[7]Carr, *supra* page 5.

The same is true of the tools we use to read. "Reading a book is not perfectly equivalent to reading a screen, no matter what the text."[8]

Our reading and work habits are being shaped by 5 key characteristics of the screen environment.

1.   The internet is a constant source of information, entertainment, and distraction.

It has given us a limitless supply of information, nearly as big as the collected body of human knowledge. "The volume of full text information that can be searched, browsed and printed from . . . [a] desktop machine is now almost unimaginable."[9]

2.   Search engines cause us to expect information quickly, without thought.

Search engines like Google give us access to the limitless information available on the internet. Search engines provide information instantaneously. And because searches are easy to formulate, they require very little thinking to find information.[10] Readers begin to expect the same qualities in other sources of information.

3.   Screens are difficult to read and encourage skimming.

Computer screens are more difficult to read than paper. Studies show that, when we read word-for-word, we read 10 to 30 percent more slowly on screens than paper.[11] Most readers compensate by skimming.

4.   Windows lets a reader open   multiple screens at once – all competing for the reader's attention.

Windows makes multitasking easy. It is like having 5 books open in front of you at one time. It creates more competition between texts for the reader's attention.

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[8]Alberto Manguel, *The Library at Night*, 79 (2006).

[9]University College of London, *Information Behaviour of the Researcher of the Future*, at 8 (January 11, 2008), http://www.bl.uk/news/pdf/googlegen.pdf.

[10]*See* Carr, *supra* page 5.

[11]Sri H. Kurniawan & Panayiotis Zaphiris, *Reading Online or on Paper: Which is Faster?*, August 2001, http://users. soe.ucsc.edu/~srikur/files/HCII_reading.pdf.

5.   E-mail results in fast communication and frequent distractions.

E-mail has become our primary way to communicate. E-mail programs are designed to interrupt our thought with notification sounds and pop-ups. It takes the average reader 64 seconds to recover from these e-mail interruptions.[12]

III.   The way we read is changing.

When Europeans first began to use the printing press, the way they read changed. The press greatly expanded the quantity of longer and more complex texts. The availability of more long texts encouraged a kind of deep reading.[13]

As we move to the paperless office – and the paperless chambers – the way we read and think is going through a similar change. Our brains are being re-wired.

Technology writer Nicholas Carr noticed that, as he read more on computer screens and less on paper, something happened to his mind:

> I have had an uncomfortable sense that someone, or something, has been tinkering with my brain, remapping the neural circuitry, reprogramming the memory. . . .[14]

He was losing the ability to focus and concentrate:

> [W]hat the Net seems to be doing is chipping away at my capacity for concentration and contemplation.[15]

In contrast to book reading, reading on computer screens promotes a style of reading that emphasizes efficiency and immediacy.[16] It is very different from the type of deep reading people do when they spend more time reading printed texts.

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[12]Thomas Jackson, et al., *The Cost of Email Interruption* 5 (2001), http://km.lboro.ac.uk/iii/pdf/JOSIT% 202001.pdf.

[13]Carr, *supra* page 5.

[14]Carr, *supra* page 5.

[15]*Id*.

[16]*Id*.

By the end of 2008, I became aware that my own reading style was changing. I was doing up to 80 or 90 percent of my reading on a computer screen. I noticed changes in my reading habits:

•**I had difficulty reading long texts.** Once an avid reader, I found that I rarely finished a book or newspaper article. My focus and interest waned after a few pages.

•**I was skimming, not reading**. I noticed that I rarely read any text line-by-line. Instead, I had developed a habit of skimming – grabbing bits of information from a page, without reading the whole page.

•**I had problems concentrating**. As I worked, I was easily distracted by e-mails or news on the internet. At times, I would have to leave my desk and sit in a room without computers to accomplish important tasks that required focus and complex thought.

These changes not only affected the way I read, but the way I wanted to read. I came to appreciate short and simple texts. For pleasure reading, I sought out brief snippets of information on blogs and websites, instead of reading longer books.

Studies demonstrate that this experience is not unusual. The way most people read has changed as a result of reading on computers.

A.   **The screen reader does not read; she skims.**

When reading on a screen instead of paper, most readers skim. Screen readers do not read word-by-word, line-by-line.

The best example of this phenomena is shown by **eye-tracking studies**. These studies use video cameras to track eye movements of readers as they read online.

Eye-tracking studies demonstrate that screen readers scan the page in an F-shaped pattern.[17] Most readers first read a few lines across the top of the page. Then they read headers, or first sentences, after a break in a text further down the page. Finally, readers' eyes scan down the left side of the text in a vertical movement.[18] The F-pattern looks something like this:

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[17] Jacob Nielsen, *F-Shaped Pattern for Reading Web Content*, Jakob Nielsen's Alertbox, April 17, 2006, http://www.useit.com/alertbox/reading_pattern.html.

[18] *Id*.

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The F-pattern suggests that screen readers are more likely to:

•**Look for headers and summaries** of content;

•**Read the first paragraph** of a text more thoroughly than the rest of the text;

•**Read the first sentence** of a paragraph, but skim the rest of the paragraph; and

•**Look for structural cues** down the left side of the page.[20]

The most important lesson of the F-pattern is that screen readers usually do not read thoroughly. In the study, almost none of the readers read all of the words on the screen. When words are located toward the end of a paragraph, further down the page, or further to the right, they are less likely to be read. *See id.*

Another illustration of skimming is the problem of online libraries. Since Project Gutenberg began in 1971, various organizations have attempted to make books available online in a digital library. The problem is that few people have the patience to read library books on a screen.

The aversion to long texts is shown by a study of readers' use of a British Library website. When the library studied how readers used academic texts online, it found few readers read them. Instead, readers (1) exhibited "a form of skimming activity," (2) hopped from one source to another, and (3) read no more than one or two pages before bouncing to another website.[21]

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[19]*See id.*

[20]*See id*.

[21]University College of London, *supra* page 6, at 10.

Screen readers skim instead of reading for a few reasons. First, they are in a hurry.[22] Screen readers have a lot of information available to them on the computer, and not enough time to read it all.

Second, it is harder to read line-by-line on a screen. This may explain why screen reading is slower than paper reading.[23]

Skimming may sound lazy, even ignorant. Yet it is a necessary tool our minds have developed to handle the information explosion and the demands of screen reading. Web users try to grab information rapidly so they can move on to gather other information. On a computer screen, the competition for a reader's attention is fierce.

B.   Screen readers do not read in the order we expect them to read.

Most legal writers assume that readers will read our writing in the order we intend – in a linear fashion from the beginning to the end of the text. Yet the screen reader takes a very different approach.

Studies of screen readers show that they do not read web pages in a linear fashion.[24] Instead of reading from start to finish, web users' eyes jump around the page, rather than reading across each line.

Steve Krug also notes that web users rarely choose the best option for finding information quickly.[25] Instead, they "satisfice" – choosing the first reasonable option that might lead them to the information they want.[26] Users satisfice because they are in a hurry to get information, and because there usually is no penalty in guessing the wrong way to get it.[27]

For the brief writer, the challenge is to make the key information and arguments so plain that the reader cannot miss them. Even if the reader jumps around to different parts of

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[22]Steve Krug, *Don't Make Me Think*, 22 (2d ed., 2006).

[23]*See* Kurniawan & Zaphiris, *supra* page 6.

[24]Smashing Magazine, 10 Principles of Effective Web Design, Jan. 31, 2008, http://www.smashingmagazine.com/2008/01/31/10-principles-of-effective-web-design/.

[25]Krug, *supra* at 24.

[26]*Id*.

[27]*Id*. at 25.

the brief rather than reading straight through, the writer must ensure that the reader does not miss the most persuasive arguments.

C.   The screen reader is impatient and wants information quickly.

"Web users are impatient and insist on instant gratification."[28] The reason for this impatience is simple. A computer is full of distractions. A screen reader can access infinite amount of interesting information. The only thing that keeps her from reading her favorite blog or responding to a friend's e-mail is your brief.

Screen reader habits such as skimming and satisficing are reflections of the reader's impatience. The user wants information quickly and easily. The reader is frustrated when a text slows the reader, or requires the reader to think unnecessarily.

The reader's impatience creates another challenge for brief writers. A long and complex brief may take hours to read and fully absorb. Brief writers must enable impatient readers to get the point of the argument in a matter of minutes. An impatient reader may not spend much more time than that.

D.   The screen reader does not want to think to get information.

Steve Krug's landmark book on web design is named for the key principle for writing to the new reader: *Don't Make Me Think*.[29] Krug explains that when a user looks at a web page:

> [I]t should be self-evident. Obvious. Self-explanatory. I should be able to "get it" – what it is and how to use it – without expending any effort thinking about it.[30]

The point is not that readers are unintelligent. We should never treat readers as incapable of thinking. Rather, they are busy and impatient. They want to get the point as quickly as possible with the least amount of effort.

This principle applies to brief writing just as it applies to web design. The goal is to persuade the reader who does not want to spend much time and much mental effort in reading your brief.

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[28] Smashing Magazine, *supra* page 10.

[29] *See* Krug, *supra* page 10.

[30] *Id*. at 11.

IV.   Legal writers must adapt to the new reader in order to persuade.

The changes in our style of reading require a change in the way we write briefs. Yet over the past 20 years, the way most lawyers write briefs has changed very little. Lawyers must adapt to be able to persuade.

A.   Judges and court attorneys will be affected by the new style of reading.

It is difficult to prove whether judges share the same general characteristics of most screen readers. There are no eye-tracking studies of judges.

Yet it appears that most judges and court lawyers are doing at least half of their reading on screens.[31] Even if some judges do not read briefs on screens now, they pick up screen reading habits when they read other materials on screens. The more we read on screens, the harder it is to return to the old linear style of reading. As Dr. Bruce Friedman, who writes a blog about the use of computers in medicine, explained:

> I now have almost totally lost the ability to read and absorb a longish article on the web or in print . . . I can't read War and Peace anymore . . . I've lost the ability to do that. Even a blog post of more than three or four paragraphs is too much to absorb. I skim it.[32]

Within the next few years, appellate courts will go paperless. Courts will begin to keep all briefs, records, and files electronically and not on paper. When the record and briefs are all stored on computer, it will be quick and easy to access a brief on screen. In contrast, printing briefs will take time and cost money.

In other words, even if most judges do not read briefs on screens now, many will be reading on screens soon. The age of judicial screen-reading is upon us.

B.   For the new century, we need a new mental image of the reader.

The key to effective writing is having a clear picture of the reader. The way we write briefs now is roughly the same as it has been for the last half century. This style reflects the 20th Century paper reader.

To write for the new style of reading, our mental image of our readers must change.

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[31]*See supra* pages 4-5.

[32]*Id*.

1.   A mental image of the 20th century reader.

When I started writing appellate briefs, I had a clear mental image of my reader. He was a judge or briefing attorney, sitting in a library-like setting. His first step was to read all briefs in the appeal. He would read them straight through, from start to finish. Then he would read the most important cases cited. Or if he thought of a supplemental issue, he would read the digest. His process was careful, thorough, and linear.

2.   A mental image of the 21st century reader.

Now, few readers meet the old model. The 21st Century reader is quite different.

She opens the briefs on a computer monitor. She may start with the Appellee's Brief, or the Reply, to find out as quickly as possible where the parties actually disagree. Within a few minutes, she has opened at least two briefs on the screen.

She skims the issues and table of contents, especially the headers. And if she reads the argument, she skims the first sentence of each paragraph. As she skims, she might stop to pull up cases on Westlaw, or to access the online record.

As she works, she also receives instant notification of e-mails from co-workers and friends. Her homepage is CNN, which she scans every time she opens a new web browser. She has several web browsers open: Westlaw, a news article she was skimming, and a website about state politics. Her eyes – and mind – jump from screen to screen, text to text.

The good news is the new reader has access to more information, more rapidly. She can confirm a cite, or follow Westlaw hyperlinks to supplemental authorities in a matter of seconds.

The bad news is that the new reader is not likely to read your whole brief with her fullest attention, or with the same depth as a print reader. And while she can download the standard of review from *City of Keller* in a matter of seconds, she is less likely to have read all of the *City of Keller* opinion thoroughly – and less likely to understand its full significance.

3.   An illustration: Uriah Heep.

A conversation with one of my partners reminded me of the difference between the two styles of reading. My partner sent me an e-mail referring to another lawyer, who called himself "humble," as Uriah Heep.

I had heard of Uriah Heep. I assumed he was a literary character. But I did not know the reference.

I Googled "uriah heep humble." Within 10 seconds, I found a web page explaining that Heep was a character in Dickens' David Copperfield, who repeatedly claimed to be "umble."

Before the internet, I would not have located this information so quickly. I might have had to ask some friends. Or I might have taken a long trip to the library. With Google, I could "get" the reference in a matter of seconds.

Yet the depth of my understanding through Google did not match the speed. I could not fully understand the rich humor of the reference because I had not read David Copperfield. Unlike my law partner, I had not spent hours absorbed in the novel, *living* with Uriah Heep.

Because I spend so much time reading online, I am unlikely to read a Dickens novel anytime soon.

Google and power surfing give us access to much more information, more quickly, but with less depth. As Carr argues, on the internet, it is harder to experience the process of *discovery* that we get when reading a book.[33]

The new readers are not the deep reader from the era of books. They do not want to be immersed in our writing. They do not want to live the story of the case or the history of the legal issue. They are not patient with our recounting of the facts and our careful argument.

New readers want the point. And they want it quickly.

V.   Usability research helps us write to the 21st Century reader.

The bad news is that our writing style must change. The good news is we have a large body of research about how to write for the new style of reading. This research comes from the school of web design known as **usability**.

A.   Why usability helps brief writers.

Usability is the study of how to make web sites easy to read. Research into usability has been well-funded. As demonstrated by the success stories of Amazon and Google, the usability of a company's website can make the difference between failure and success. For this reason, we have more research now than ever before about the way people read.

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[33]*Carr*, *supra* at 5.

I first encountered usability research when I was designing content for my own website – a blog about Houston restaurants and food. As I began to apply usability tools, I had more site visitors. As the size of my text shrunk, I found that readers actually stayed *longer* on my site.

Usability tools are also useful for brief writers. They can make a brief easier to read. And they make it easier to get the point quickly. They also focus readers on the most important parts of your argument, so they understand your argument.

B.   7 usability tools for brief writers.

The following are 7 usability principles that are essential in writing to the new style of reader. Although designed for the new screen reader, they are not counterproductive for the paper reader. They make the brief easier to use, and more persuasive, for almost anyone.

1.   Enable skimming.

Picture a judge who allots 15 minutes before oral argument to skim your brief. Even if you have a 50-page brief, it is possible to enable her to skim every step of your argument without reading your whole brief. If you enable skimming, she will understand your argument. If you do not enable skimming, she will understand little about your argument from that 15 minutes of reading.

How do we enable skimming? Research into the F-pattern suggests that skimmers focus on the content that appears in particular places on a page.[34] For a brief writer, the best pages for important content are:

1.   **Headers**, particularly headers above the middle of a page;

2.   **Short summaries**, such as at the beginning of the statement of facts, the beginning of the argument, and the beginning of each issue; and

3.   **Topic sentences** – the first sentences of paragraphs.

Of these tools, the most important is the header. Studies show that one of the first things web readers look at on a page is the headers.[35]

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[34]*See supra* at 8-9.

[35] *See* Christina Laun, *Scientific Web Design: 23 Actionable Lessons from Eye-Tracking Studies*, Virtual Hosting, Nov. 13, 2007, http://www.virtualhosting.com/blog/2007/ scientific-web-design-23-actionable-lessons- from-eye-tracking-studies/.

The headers in a brief should summarize your argument. Ideally, a skimmer should be able to read only your headers and get the point of the argument. To enable skimming, brief writers should place all of their best arguments, and best support, in the headers. The remainder of the brief is only for support.

On a more detailed level, your best arguments should appear in the first sentences of paragraphs. Readers are more likely to read the first sentence than the remainder of the paragraph, which should be for more detailed support.

Skimmers also skim down the left side of the page to find structure.[36] To perceive structure, skimmers use cues such as:

1.   **Bullet points -** suggest a listing of support or examples;

2.   **Numbered lists -** suggest a purposefully ordered list of support or examples; and

3.   **Outlines** - suggest the relationship between primary and secondary steps in the argument.

In particular, usability studies show that a reader's attention is attracted by lists. Lists make a site easier to skim, and easier for users to find the information they need.[37]

An illustration of the power of lists can be found in popular magazines. Articles have titles such as, "10 Ways to Get Great Abs." Without the list format, a long discussion of ways to improve abs might be tedious. The list makes it easier to process.

An effective brief uses this sort of structural cue to break up text into easily skimmed parts. And it enables the skimmer to quickly see the relationship between arguments and to understand the brief's logic.

2.   Omit ~~needless~~ words.

In the mid-20th Century, Strunk & White advised readers to "omit needless words."[38] For the 21st Century reader, Steve Krug simplifies the adivce: "omit words."[39]

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[36]*Id*.

[37]*Id*.

[38] William Strunk Jr. & E.B. White, *The Elements of Style* 23 (3d ed. 1979).

[39]Krug, *supra* page 10, at 45.

The difference is a matter of degree. The new reader only absorbs so many words. They need to read your best words.

Paradoxically, when I shortened the posts on my blog, I found that average reading time *increased*. In other words, as I wrote less, readers spent more time reading.

Krug suggests editing drafts of web pages by cutting half of all words.[40] This makes the useful content more prominent. And it reduces the level of "noise" on the page.[41]

The importance of brevity for the new reader is demonstrated by Twitter. Twitter is a social networking site that prohibits messages longer than 140 characters and spaces. That is the equivalent of one or two short sentences.

Twitter is in tune with the demands of the new reader. It requires messages to be brief because readers want short bits of information.

Of course, briefs will never be as short as a Twitter message. But brief writers can learn from Twitter how to cut words and still make the same arguments.

3. **Don't force your reader to think**.

An effective brief should persuade the reader without requiring the reader to think. That does not mean briefs should condescend to readers or treat them as unintelligent. Our readers are intelligent. But our briefs should not require them to do unnecessary work.

As writers, we can do several things to make it easier for judges to read our briefs.

Connect the dots. Brief writers should never omit any step in their arguments. We cannot expect judges to make the same logical assumptions that we have made unless we explain those assumptions. And we cannot expect judges to make connections in different parts of a brief, when we do not explicitly describe the connections. Remember, not all readers read in a linear fashion from beginning to end. A good brief clearly identifies each step of argument.

Make the logical structure intuitive. Usability teaches that a web site's architecture should be intuitive to the user.[42] Similarly, the structure of an argument a brief should be

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[40] *Id*. at 45.

[41] *Id*.

[42] Smashing Magazine, *supra* page 10.

intuitively apparent. We accomplish this with tools, such as outlines, that show the reader which points are primary, and which points are secondary and supporting. Briefs should include an argument outline that allows the judge to perceive the logic of the argument without unnecessary thought.

Avoid synonyms. Synonyms require readers to think unnecessarily. Consider a brief that refers to the "district court," the "lower court," and the "trial court." All of these synonyms may refer to the same court, but a judge has to do some extra thought to realize that the phrases mean the same thing. An argument is easier to follow when it repeatedly uses the same words for the same things.

4.   Make it simple.

The most successful web page ever is Google. It dominates it the search engine market. Once, there was fierce competition among search sites. Last year, 63.5 percent of all searches were performed on Google.[43]

The key to Google's success is simplicity. Google's homepage has less than 25 words. No sentences. Most of the screen is white. Users find any information they want by typing a few words into a box and pressing "Search."

Google is different from earlier search engines, such as Westlaw and Lexis, that were designed to search legal databases. Those search engines required the user to spell out the search in Boolean logic. In contrast, Google requires little or no thought beyond entering the subject to be searched.

Google won the search engine wars because it is so simple.

A brief cannot look like Google. But a persuasive brief should be simple. Brief writers should strive for simplicity in:

•**Language**
•**Logic**
•**Structure**
•**Design**

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[43]Erick Schonfeld, *Google Gobbled Up 90 Percent of all U.S. Search Growth in 2008*, TechCrunch, January 28, 2009, http://www. techcrunch.com/2009/01/28/google-gobbled-up-90-percent-of-all-us-search-growth-in-2008/.

A simple brief requires less thought to use. It allows the reader to focus on the core of the argument – and to be persuaded.

5.   Use white space.

White space is any blank part of a page.[44] Usability studies have demonstrated that white space has a great effect on how much a user enjoys a page.[45]

This makes sense. White space gives our eyes and brain a rest. It is a pause. It allows a mental breath.

This helps explain why long sentences and paragraphs are hard to read. The brain needs a rest between thoughts.

Eyetracking studies show that shorter paragraphs perform better than longer paragraphs.[46] Short paragraphs receive twice the overall eye fixations as longer paragraphs.[47]

Large blocks of text can push a reader to skimming (or falling asleep). To stay fresh, readers need a chapter break – in other words, a new argument header – at least every two pages. Readers need paragraph breaks at least every one-third of a page. And readers appreciate a short sentence.

6.   Put the most important content in the top left of the page.

The F-pattern of web reading suggests that readers' eyes gravitate to the top left of a page.[48] Readers are far less likely to read content toward the bottom right side of a page. Rather, their eyes tend to skim the lower portions of a page seeking something to grab their attention.[49]

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[44]Robert Hoekman, Jr., *Designing the Obvious: A Common Sense Approach to Web Application Design*, 214 (2007).

[45]*Id*.

[46]Steve Outing and Laura Ruel, *The Best of Eyetrack III: What We Saw When We Looked Through Their Eyes*, http://poynterextra.org/eyetrack2004/main.htm.

[47]*Id*.

[48]*See* Nielsen, *supra* page 8.

[49]Outing and Ruel, *supra*.

For brief writers, this means that important headers, such as the beginning of a new issue, should appear toward the top of a page. If a new issue falls toward the bottom of a page, the writer should insert a page break, leave a space at the bottom of the page, and start the new argument on the next page.

7. Test your brief.

The most common advice among usability experts is to test websites on users.[50] To paraphrase Krug, "if you want a great [brief], you've got to test."[51]

The person who wrote a brief is the worst person to review or edit it. The writer cannot see it freshly anymore. She knows too much.[52] She cannot read it the same way as a new reader.

Website designers often use dozens of test subjects with equipment such as eye-tracking devices. Lawyers may not have that luxury. But "[t]esting one user is 100 percent better than testing none."[53]

The key to testing a brief is to enlist a reader who is largely a stranger to the case. It may be helpful to get testing feedback from a former judge or a lawyer who specializes in the same subject matter as the brief. But any intelligent person – with or without a law degree – can give valuable feedback about how the brief reads.

The questions you want to ask may include:

•Were any parts of the brief hard to read?

•Did you find yourself skimming parts of the brief? If so, what parts did you read?

•Which parts of the argument did not make sense?

•Which parts of the argument were not persuasive? Why?

•What questions did you still have after you finished reading?

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[50]*See, e.g.,* Hoekman, *supra* page 19, at 100; Krug, *supra* page 10, at 133.

[51]*Id.*

[52]*Id*. at 133.

[53]*Id*. at 134.

Getting this sort of feedback is invaluable in understanding how a judge or law clerk is likely to react to your brief.

## VI.	Conclusion: a glimpse into the future.

The brief of the future is likely to be a different medium. As we move to electronic filing, and screen reading, the format and style of briefs is likely to change.

If all work is done on computer screens, briefs may start to be structured more like websites. The single continuous text may be replaced by multiple screens for each part and subpart of an issue. Tabs may replace tables of contents.

The size of briefs also may shrink. Paragraphs will become shorter. Briefs will use more headers.

These changes may make judging easier. Briefs will take less time to read. And it should become easier to the point more quickly.

But for successful lawyers, this style of brief will take more time to write. As any editor knows, it takes more time to make a text shorter. Lawyers will have to spend more time distilling their argument to its essence – in a form that can be read on a screen.