



E-Filing: Entering the Electronic Age—Part I

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Writing has changed more in recent decades than in any other period in the past few centuries. In other eras, when the pace of life was slower, writing could be more stylized and pieces longer. Now attention spans have shortened, and communicators have to get to the point far more quickly than they once did. . . .¹

In the seventh century A.D., the English language experienced a transformation, shifting from an oral tradition to written form.² This shift altered the way people received and processed information: communication turned from word-of-mouth to lines of words preserved on a page.

With today's communication converting from paper to electronic format, we are living in an age of transformation as well. This shift will metamorphose the way lawyers and judges read—and write—legal documents.

Electronic Filing in Colorado

Colorado state courts are on the cutting edge with respect to electronic filing ("e-filing"). Colorado is one of the first states to enact "E-Record" legislation,³ and all district courts in Colorado have e-filing capability for the civil, probate, domestic, and water divisions.⁴ In addition, as of the summer 2003, the following Colorado courts mandated e-filing: the Probate Court in Denver;⁵ Seventeenth Judicial District Court for Broomfield County (domestic, probate, and civil cases); Twentieth Judicial District in Boulder (civil cases);⁶ and Civil Division 206 Court in Arapahoe County (domestic, probate, and civil cases).⁷

The Colorado appellate courts are fast following in the district courts' electronic footsteps. At the April 2003 meeting of the Colorado Bar Association ("CBA") Appellate Practice Subcommittee, John Doerner, the Clerk of the Colorado Court of Appeals, announced that more than 119 appellate cases already have been designated as electronic records cases through a pilot

project between the Court of Appeals and Arapahoe County.⁸ Doerner provided the group with information about preparing and filing electronic briefs for the Colorado Court of Appeals.

Although the Tenth Circuit Court of Appeals and U.S. District Court for the District of Colorado do not yet have an e-filing and case management system, the Administrative Office of the U.S. Courts announced that all federal courts would have such systems by 2005.⁹ At present, e-filing systems are being established in more than 102 federal courts, and an additional nine courts are added to the total every two months.¹⁰

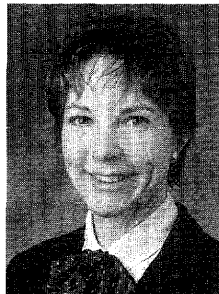
Reading Paper Versus Electronic Documents

While novels are read for pleasure, judges read briefs with a single-minded purpose: they are seeking assistance in making a sound judicial decision. Most of us approach novels from start to finish, using a sequential and linear reading model.¹¹ Playful or poetic word constructions, mysteries and twists in the plot, and delicious details all can be an intended part of the novel experience.

In contrast, a brief is a utilitarian document, and busy judges want from a brief "exactly the material needed for the decision—not less and not more."¹² Thus, judges and other experienced legal readers approach a brief or judicial opinion quite differently from a novel. Instead of reading word-for-word sequentially, many judges skim portions of a brief and concentrate on other portions. They may skip around to confirm the

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analysis or any gaps in the reasoning, and they may backtrack to focus on key concepts.¹³ This legal reading process may be closer to the "snatch and grab" approach used by many readers of electronic materials,¹⁴ yet a purely electronic format will further alter the process of digesting the information.

E-filing will permit the use of hypertext links in legal materials. Briefs on paper may contain footnotes or appendices that interrupt the linear reading process, but a good legal writer keeps readers focused and relegates these interruptions to a minimum.¹⁵ In contrast, hypertext links in an electronic environment place greater emphasis on these types of asides and convert the process of taking in information. In the electronic environment, "the reading process is often referred to as 'browsing' or 'navigating' instead of just 'reading.'"¹⁶ Thus, electronic readers "feel that they can move freely through the information, according to their own needs."¹⁷ The hypertext links allow these readers to break away from "the sequential process envisioned by conventional text."¹⁸ Instead, reading can become "a discontinuous or non-linear process" more "like thinking [which] is associative in nature."¹⁹

Writing with the Hypertext Link

While it may seem liberating for electronic readers to follow a link or not, thus taking control over the order in which they process information in a brief, this freedom creates a dilemma for writers. Carefully constructed arguments that move through a deductive pattern of general to specific may be lost if readers are too distracted by the associative links. Thus, the pressure to hold readers' attention places a higher premium on how writers present the argument.

Eventually, briefs may take on a form much like online newsletters, starting with a home page that is something like a "clickable" table of contents,²⁰ allowing readers to follow whichever path they wish to pursue. However, writers need not surrender so much to the electronic format. Because hypertext links can disorient, readers appreciate context and a logical sequence.²¹ Fortunately, many of the techniques for providing context and a logical sequence on paper should translate well to electronic format.

Use thesis paragraphs as roadmaps to communicate the major concepts and provide context.²² Both large and small-scale arguments should be constructed to flow in a logical sequence, with the information that comes first providing context for information that follows.²³ In addition, the temptation to diverge into a hypertext link will be diminished if references are specific enough for readers to follow the argument²⁴ without clicking on the link. Finally, readers may be less tempted to stray if text is clear and succinct.

Conclusion

This column has focused on Colorado's conversion to e-filings and how that conversion may change the ways legal readers and writers construct briefs. The next "Scrivener," to be published in the November 2003 issue, will address some of the physical considerations surrounding electronic briefs and the advantages of accessing records or legal authorities with a single mouse click.

NOTES

1. Stark, *Writing To Win: The Legal Writer*, xiv-xv (Mansfield, OH: Main Street Books, 1999).
2. *The Norton Anthology of English Literature*, Vol. 1 (New York, NY: W.W. Norton & Co., Inc., 1968) at 4.
3. Gorrell and Kamicar, "Colorado Launches E-Recording," 31 *The Colorado Lawyer* 21 (Dec. 2002). In the 2002 legislative session, Colorado enacted the Uniform Electronic Transactions Act and the E-Record bill. See CRS §§ 30-10-405.5 *et seq.*, CRS §§ 12-55-102 *et seq.*, and CRS §§ 24-71.3-101 *et seq.*
4. See <http://www.courts.state.co.us/exec/media/pressrelease/efilings.doc> and [http://www.courts.state.co.us/supct/rules/2003/2003\(8\).doc](http://www.courts.state.co.us/supct/rules/2003/2003(8).doc) (adopted April 17, 2003, by the Colorado Supreme Court, *en banc*, with the exception of Justices Rice and Coats). Also confirmed with Steve Loftus, Office of the State Court Administrator.
5. See <http://www.courts.state.co.us/district/02nd/probate/mandated-e-filing.htm>.
6. See <http://www.courts.state.co.us/district/20th/efilingpacket.pdf>.
7. <http://www.courts.state.co.us/district/18th/arapahoeefileorder.pdf>.
8. <http://www.courts.state.co.us/coa/clerkofthecourt/elecbriefpilot.htm>.
9. Nelson and Simek, 26 *Wyoming Lawyer* 25 (April 2003).
10. *Id.* (The 102 courts referenced include 71 bankruptcy courts and 31 district courts.)
11. See Sutherland-Smith, "Weaving the Literacy Web: Changes in Reading from Page to Screen," *Reading Teacher* (April 2002).
12. Neuman, Jr., *Legal Reasoning and Legal Writing: Structure Strategy and Style*, 4th ed. (New York, NY: Aspen Law & Business, 2001) at 52.
13. Stratman, "Investigating Persuasive Processes in Legal Discourse in Real-Time: Cognitive Biases and Rhetorical Choices in Briefs," 17 *Discourse Processes* 1 (1994).
14. Sutherland-Smith, *supra*, note 11.
15. DuVivier, "The Footnote=An Interruption," 26 *The Colorado Lawyer* 47 (May 1997).
16. Perez Crist, "The E-Brief: Legal Writing for an Online World," 33 *New Mexico Law Review* 49, 69 (2003) (citing Rouet *et al.*, eds., *Hypertext and Cognition* 14 (Hillsdale, NJ: Lawrence Erlbaum Assocs., Inc., 1996)); Nielsen, *Multimedia and Hypertext—The Internet and Beyond* (San Diego, CA: Academic Press, 1995) (also citing Britton and Glynn, eds., *Computer Writing Environments: Theory Research and Design* (Hillsdale, NJ: Lawrence Erlbaum Assocs., Inc., 1989); Charne, "The Effect of Hypertext on Processes of Reading and Writing," in Selfe *et al.*, eds., *Literacy and Computers—The Complications of Teaching and Learning with Technology* (New York, NY: Modern Language Association of America, 1994).
17. Rouet, *cited in* Perez Crist, *supra*, note 16.
18. Slatin, "Reading Hypertext; Order and Coherence in a New Medium," Delany and Landow, eds., *Hypermedia and Literary Studies* 158 (Cambridge, MA: MIT Press, 1991), *cited in* Sutherland-Smith, *supra*, note 11.
19. Slatin, *supra*, note 18.
20. Perez Crist, *supra*, note 16 at 71.
21. Berk and Devlin, eds., *Hypertext/Hypermedia Handbook* (New York, NY: McGraw-Hill, 1991), *cited in* Perez Crist, *supra*, note 16 at 70.
22. DuVivier, "Road Maps," 22 *The Colorado Lawyer* 25 (Jan. 1993).
23. DuVivier, "Getting Organized," 20 *The Colorado Lawyer* 1399 (July 1991).
24. DuVivier, "Cross-References, As Stated Above," 30 *The Colorado Lawyer* 87 (July 2001). ■

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