

Minnesota CLE



CRIMINAL JUSTICE INSTITUTE

AUGUST 22 & 23, 2017

ROBINS // KAPLAN LLP

REWRITING THE ODDS

10 TIPS TO MAKE YOUR CONVENTIONAL BRIEFING FORMAT APPROPRIATE FOR E-BRIEFING

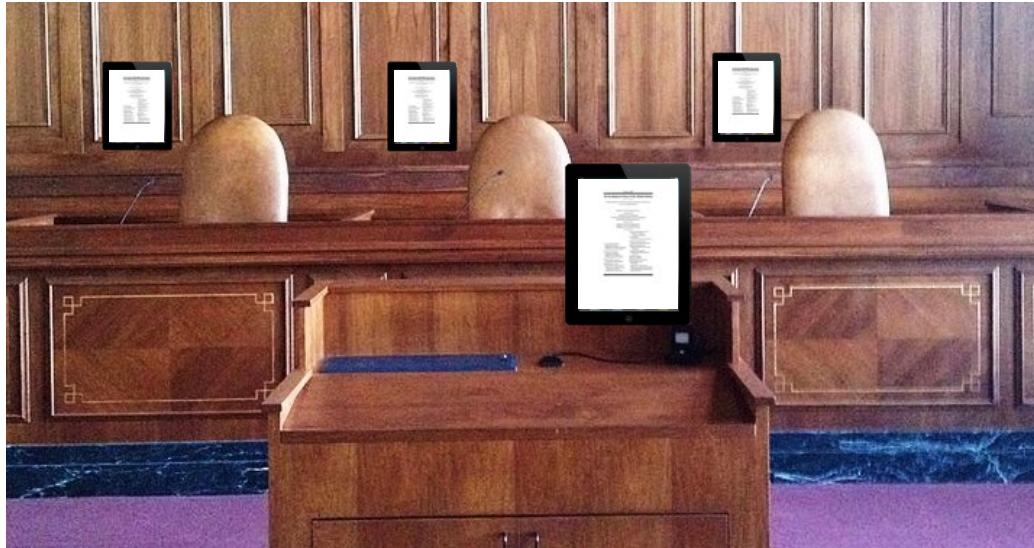


LISA LODIN
PERALTA



Why?

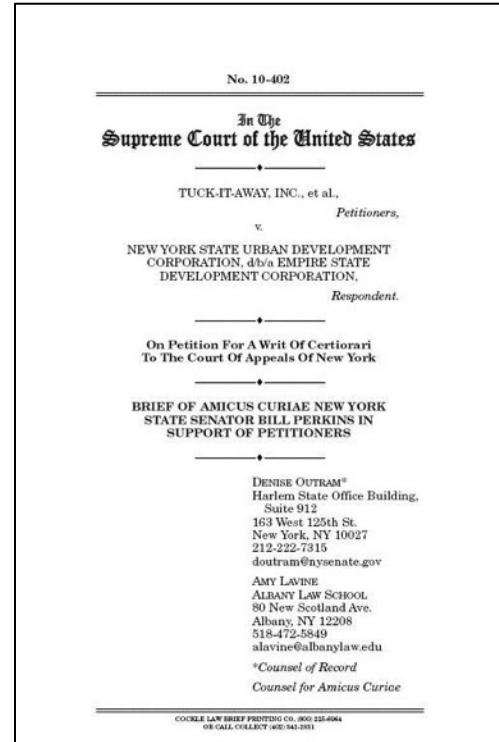
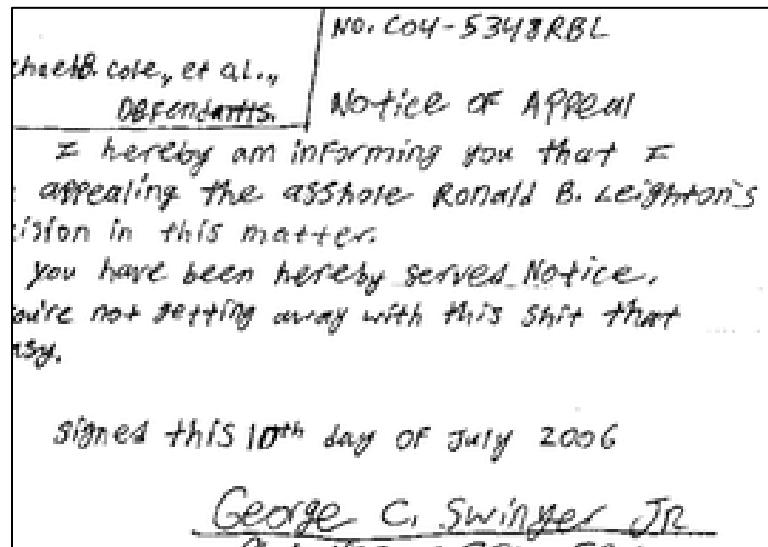
Effective advocacy in a technological world



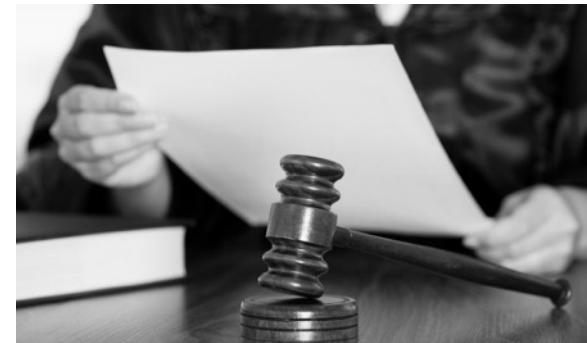
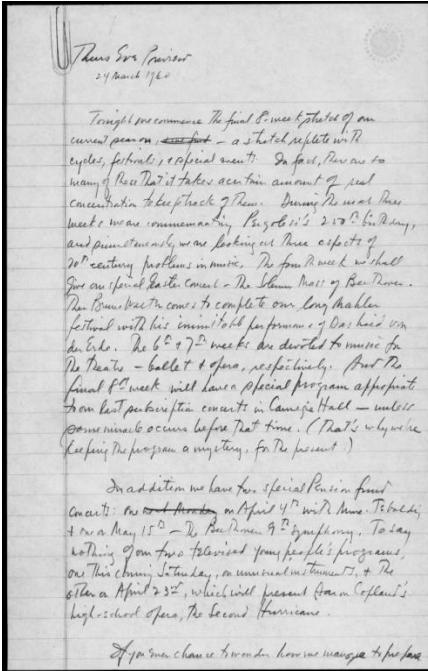
Speaking to Courts



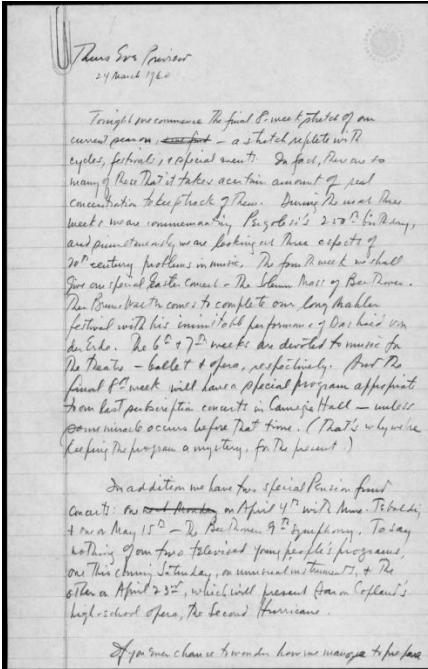
Writing for Courts



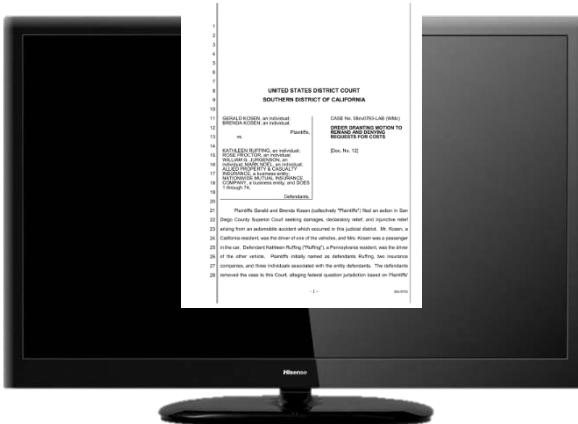
Mid-Century Workflow



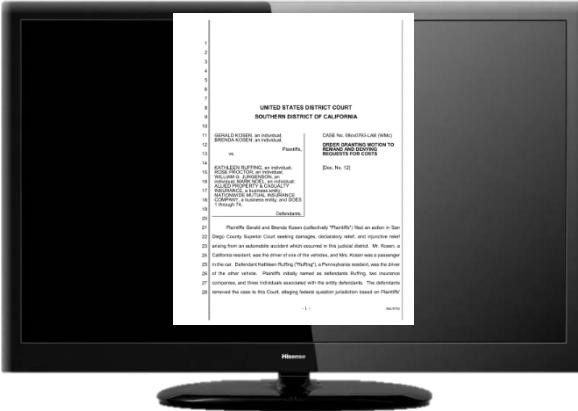
1980's Workflow



1990's – 2000's Workflow

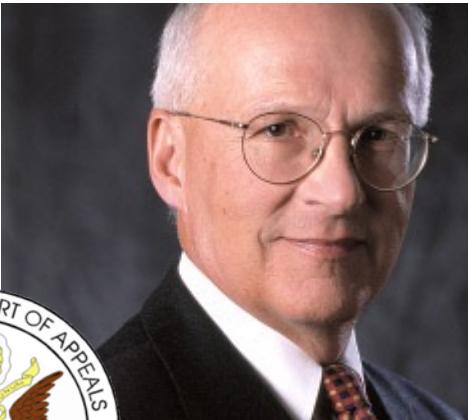


2010's Workflow



Richard C. Wesley

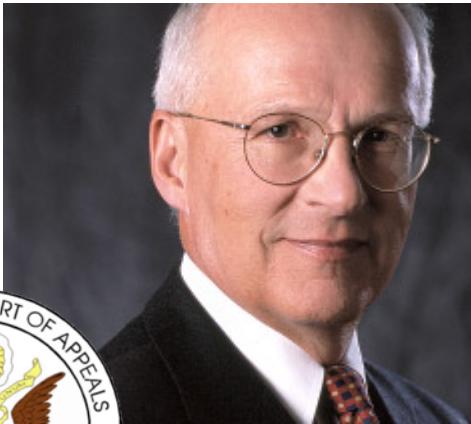
Second Circuit Court of Appeals



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

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

[Source](#)



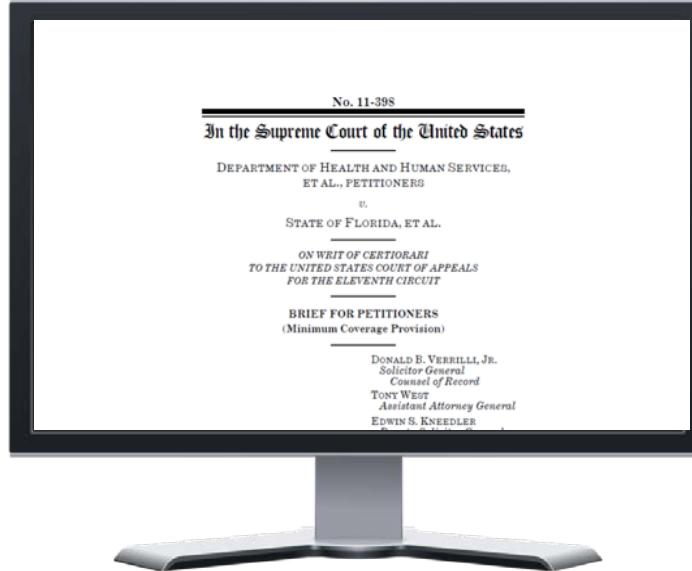
~2011: Clerks taught how to use iPad

“Now I use it all the time!”

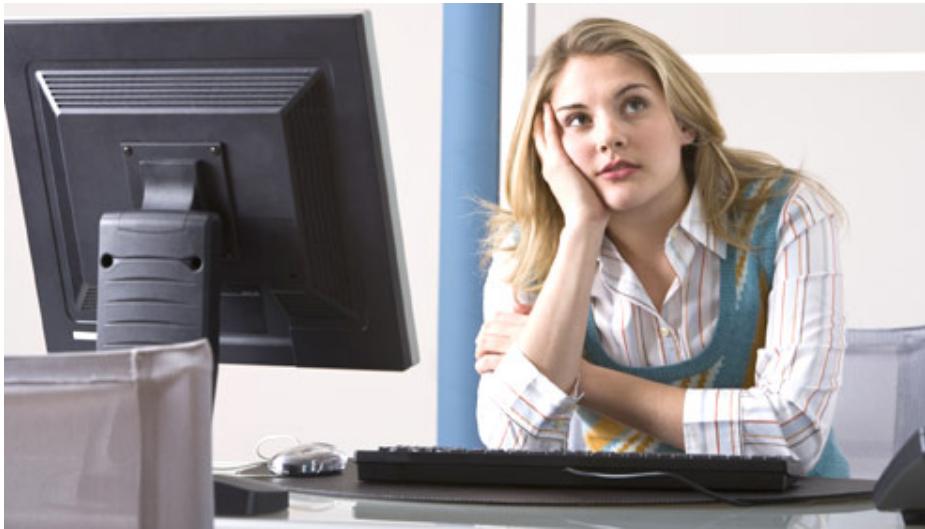
“And now, so do many of my fellow judges . . .”

[Source](#)

Writing for Screens

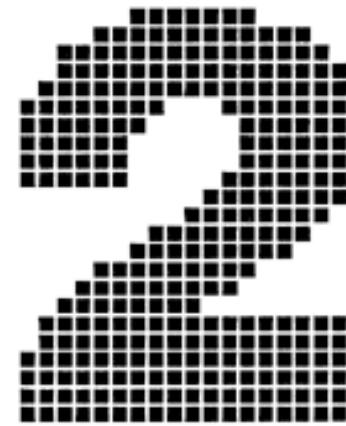
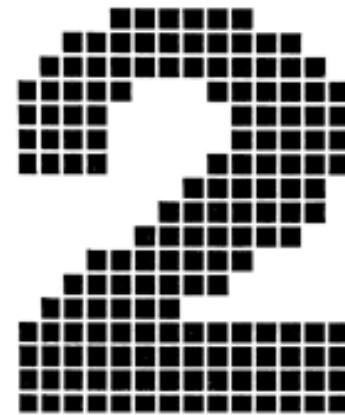


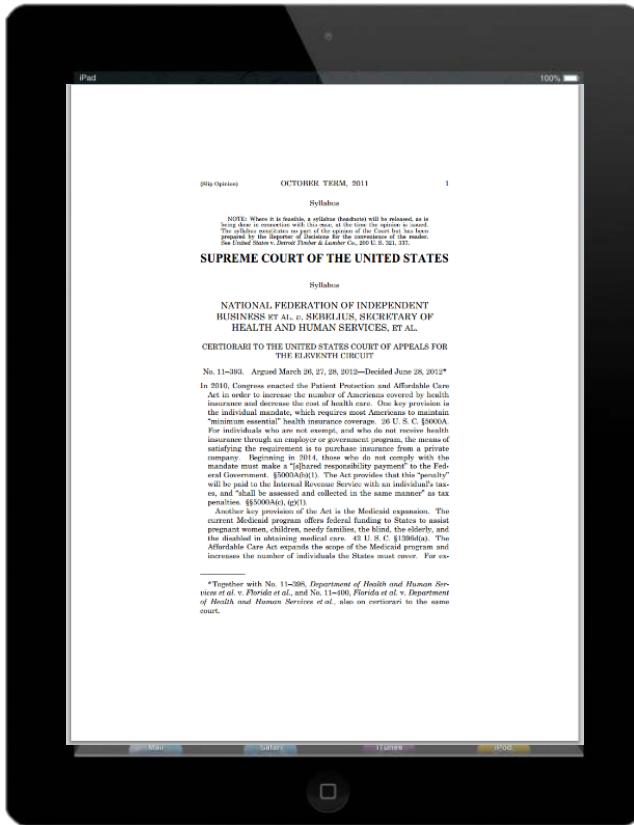
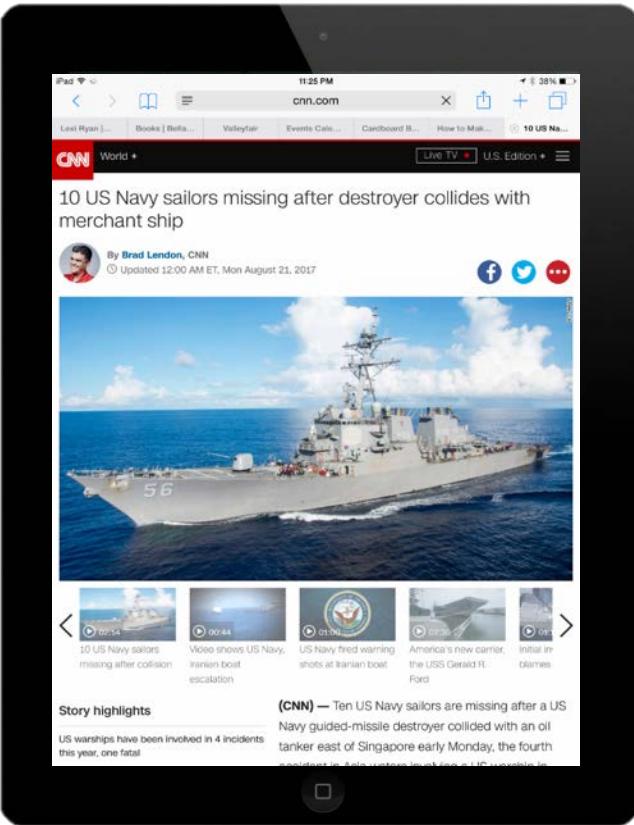
Negative Impact on Comprehension



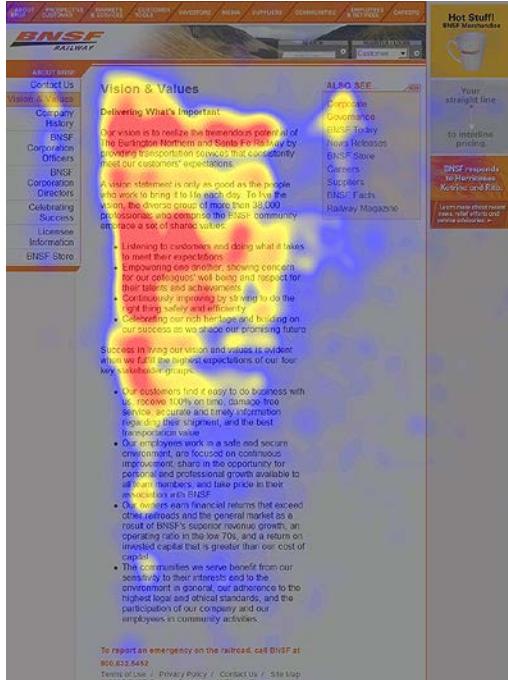
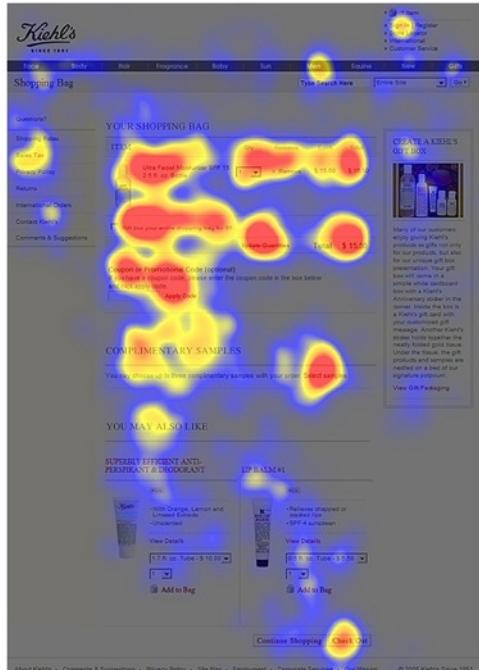
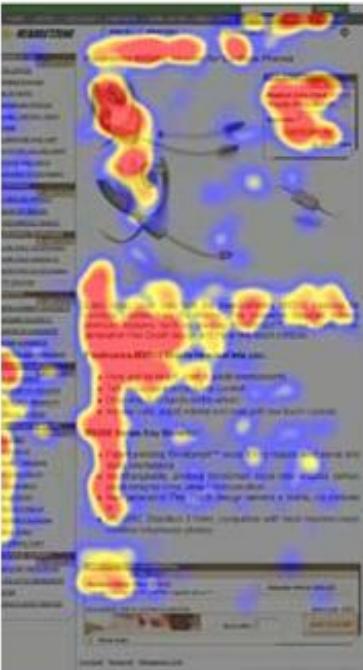
Screen resolution table

CRT Monitors	60ppi
LCD Monitors	110 ppi
iPad and Nexus Displays	~326 ppi
Paper	300-600 ppi





Eye-Tracking Studies



To report an emergency on the railroad, call BNSF at
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“[E]ye tracking supports that users do not read all of the content on a Web page.”

—Usability.gov



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

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

—Usability.gov

But what if
documents are
consumed
digitally?

Old Style

vs.

New Style

Times New Roman 12-pt

Summary and Request for Oral Argument

Appellant Sean Meadows was sentenced to 300 months after pleading guilty to 11 fraud counts for a one-man Ponzi scheme involving \$13 million and more than 75 victims. In this sentencing appeal, the questions presented are whether the district court erred by: enhancing two points for sophisticated means when the fraud consisted of promising to invest in a bond and stealing the money for himself; and enhancing four points for violation of securities law when not only was there was no security and basis to find a violation of securities law. In addition, Appellant contends that the district court resentencing him to 300 months is substantively unreasonable, particularly in light of the extensive evidence of post-sentencing rehabilitation and the disparity in his sentence compared to others who defraud.

Oral argument will assist the court in unravelling what should be simple issues but became long, twisted and convoluted in the entire circumstances of this case. Appellant requests 20 minutes to present his case.

Book Antiqua 14-pt

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TIP 1

**RETHINK YOUR FONT STYLE
(TRASH TIMES NEW ROMAN)**



Sans Serif

Serif

The image features the words "Sans Serif" and "Serif" in a bold, black, sans-serif font. A red line graph is overlaid on the text. The graph has four data points, each marked with a red circle. The first point is on the "S" of "Sans". The second point is on the "e" of "Serif". The third point is on the "r" of "Serif". The fourth point is on the "f" of "Serif". The line connects these points in a sequence: S → e → r → f.

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.

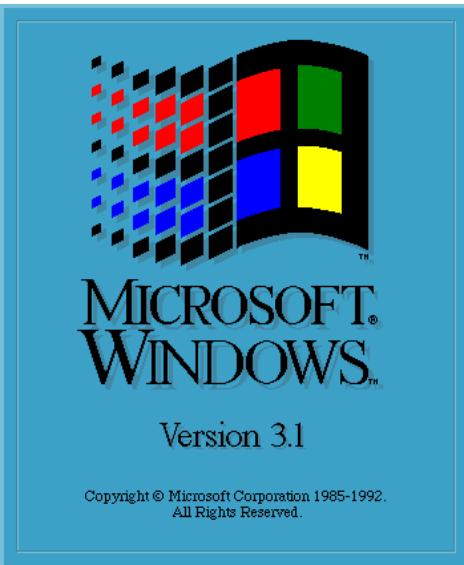
Times New Roman 1932



EFGHIJKLMNOPQRSTUVWXYZ
ghijklmnopqrstuvwxyz

Condensed type style = more text per page

Desktops in 1992



100

8 Times New Roman Times
10 Times New Roman Times
12 Times New Roman Times
16 Times New Roman Times
24 Times New Roman Times
36 Times New Roman Times
48 Times New Roman Times
60 Times New Roman Times
72 Times New Roman Times

Default in 2007



Calibri

ABCDabcd - Regular

ABCDabcd - Bold

ABCDabcd - Italic

ABCDabcd - Bold Italic

So Which Do you Choose?

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



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.

Compare...

Times New Roman

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Book Antiqua

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TIP 2

INCREASE YOUR
FONT SIZE

Word Count not Page Count



MINNESOTA
JUDICIAL BRANCH

**Minn. R. Civ. App. P.
132.01, Subdivision 3**

Principal brief no more than
14,000 words



**Fed. R. App. P.
32(a)(7)(B)(i)**

Principal brief no more
than 13,000 words

No More 12-Point!



MINNESOTA
JUDICIAL BRANCH

**Minn. R. Civ. App. P. 132.01,
Subdivision 1**

... if a proportional font is used,
printed or typed material
(including headings and
footnotes) must appear in **at
least 13-point font.**



**Fed. R. App. P.
32(a)(5)(A)**

A proportionally spaced
face must be **14-point
or larger.**

Compare ...

Times New Roman

Summary and Request for Oral Argument

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12-pt

Book Antiqua

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13-pt

14-pt

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TIP 3

INCREASE YOUR SIDE MARGIN

Court Opinion Margins

(Slip Opinions)

OCTOBER TERM, 2011

1

Syllabus

NOTE: Where it is feasible, a syllabus (synopsis) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus does not indicate whether it is a majority, minority or dissenting opinion. Accordingly, it is not available as a citable authority. See *United States v. Danner*, 391 U. S. 321, 332.

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. 11-385 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 “affordable” health insurance coverage. 26 U. S. C. §3009A. For individuals without health insurance, who do not have 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 will be subject to a “penalty” imposed by the Internal Revenue Service and the Federal Government. §3009A(b)(1). The Act provides that this “penalty” will be paid to the Internal Revenue Service with an individual’s taxes, and “will be assessed and collected in the same manner” as tax penalties. §3009A(c)(g).

Another key provision of the Act is the Medicaid expansion. The current Medicaid program offers federal funds to States to assist people with low income and disabilities to buy health care and the disabled in obtaining medical care. 42 U. S. C. §1396(d). 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. 11-386, *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.

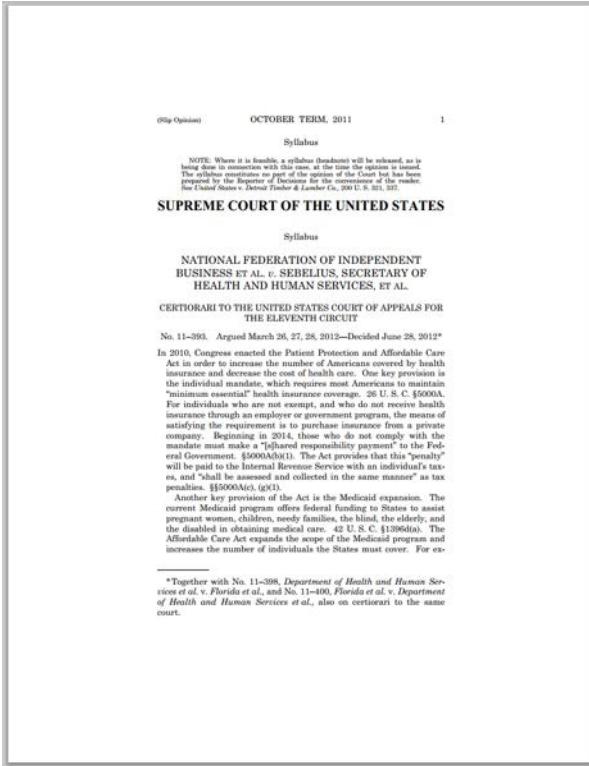
No. 3:09-cv-00500-wmc—William M. Conley, Chief Judge.

ARGUED JUNE 22, 2012—DECIDED JULY 12, 2012

Before POSNER, ROVNER, and WOOD, Circuit Judges.

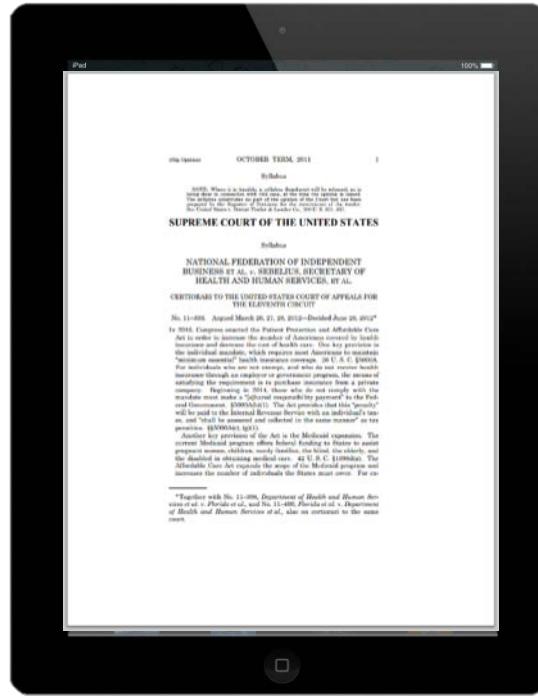
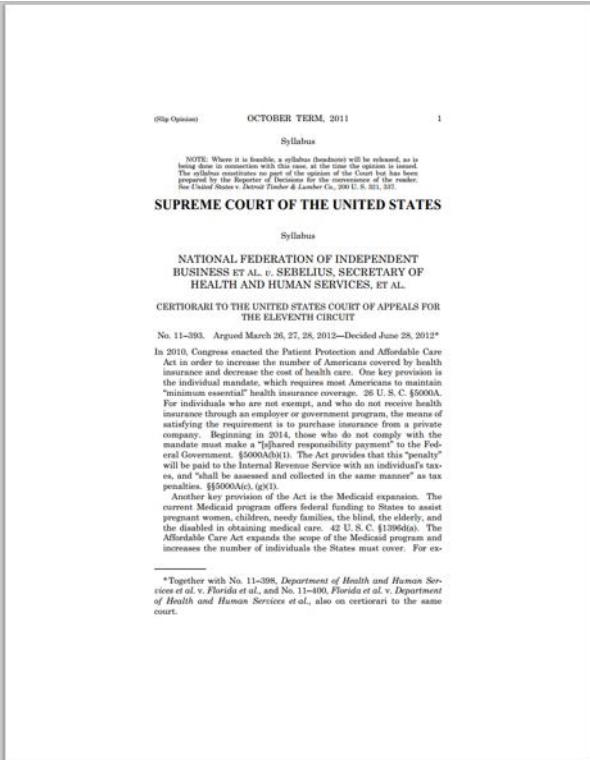
POSNER, Circuit Judge. Timothy Mund, an American, married Wenfang Liu, a Chinese woman 19 years his junior, in China. Two years later the couple decided to move to the United States. For Liu to be admitted as a permanent resident on the basis of her marriage to an American, her husband had to sign an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

Tablets are Smaller than 8.5" x 11" Pages



*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

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SUPREME COURT OF THE UNITED STATES

Syllabus

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

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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 have 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. The individual mandate is unconstitutional because the mandate must make a “[t]hreshold responsibility payment” to the Federal Government. §5000A(a)(1). The Act provides that this “penalty” will be paid to the Internal Revenue Service with an individual’s taxes, and that it will be “assessed and collected in the same manner” as tax penalties. §5000A(c)(3). (qd.)

Another key provision of the Act is the Medicaid expansion. The current Medicaid program offers federal funding to States to assist programs that provide health care for the poor, blind, disabled, 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-

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(Slip Opinion) OCTOBER TERM, 2011

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Compare...

1-inch Margin

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1.3-inch Margin

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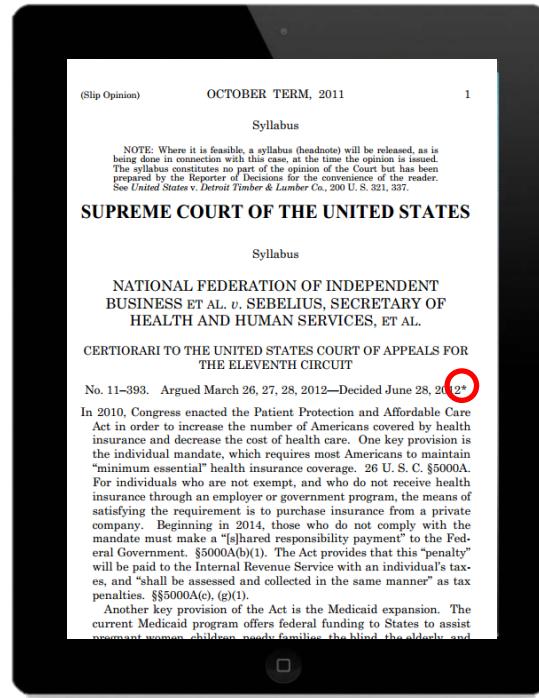
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TIP 4

ELIMINATE (MOSTLY)
FOOTNOTES

Footnotes?



TIP 5

**CREATE EXTRA
WHITE SPACE**

Paragraph/Line Spacing

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

Compare ...

Times New Roman 12-pt

Mr. Meadows primarily sold annuities, a financial product designed to provide a fixed stream of payments to a beneficiary during a defined period of time. [PSR 2, ¶8; Plea Hrg. 31-32, 36.] At times Mr. Meadows also traded stocks and bonds on behalf of his clients. [PSR 2, ¶9.]

1. The Ponzi Scheme

In 2007, Mr. Meadows began soliciting investments from clients for what he described as a high interest “bond” held by Meadows Financial Group. [PSR 4, ¶16; Plea Hrg. 34.] Mr. Meadows described the “bond” as safe, liquid, and guaranteeing a high rate of return of up to 10% annually. [PSR 4, ¶16; Plea Hrg. 71; Govt’s Response to Def.’s Sent. Mem., Ex. 1, Document 112-1.]

But the “bond” never existed. [PSR 3; Plea Hrg. 32-34.] Mr. Meadows’ clients were not savvy investors, and he never fully explained the nature of the bond to them. [PSR 4, ¶17.]

Mr. Meadows stole \$13 million this way. [PSR 4, ¶18; Plea Hrg. 35.] As time passed, Mr. Meadows used some of the stolen money to pay people back, lulling them into a false sense of security. [Plea Hrg. 32-33, 37-38.] Subsequently, Mr. Meadows spent the money on himself: making payments to himself and his wife; making payments

Book Antiqua 14-pt

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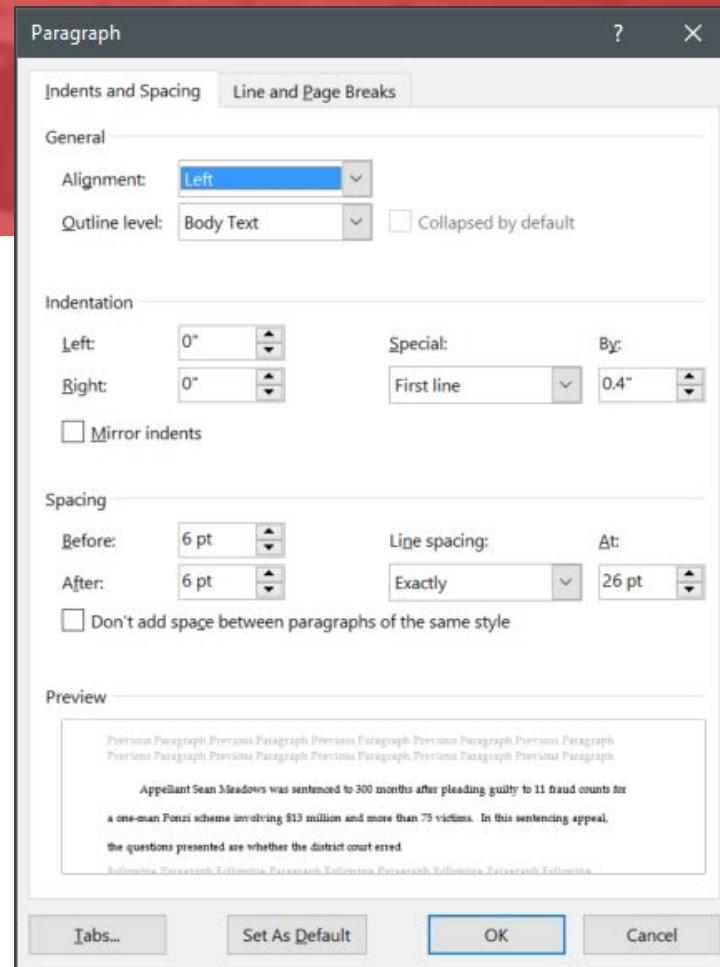
2. The Ponzi Scheme

In 2007, Mr. Meadows began soliciting investments from clients for what he described as a high interest “bond” held by Meadows Financial Group. [PSR 4, ¶16; Plea Hrg. 34.] Mr. Meadows described the “bond” as safe, liquid, and guaranteeing a high rate of return of up to 10% annually. [PSR 4, ¶16; Plea Hrg. 71; Govt’s Response to Def.’s Sent. Mem., Ex. 1, Document 112-1.]

But the “bond” never existed. [PSR 3; Plea Hrg. 32-34.] Mr. Meadows’ clients were not savvy investors, and he never fully explained the nature of the bond to them. [PSR 4, ¶17.]

Mr. Meadows stole \$13 million this way. [PSR 4, ¶18; Plea Hrg. 35.] As time passed, Mr. Meadows used some of the stolen money

Paragraph Options In Microsoft Word



TIP 6

**WRITE HEADINGS, SUB-HEADINGS
AND SUB-SUB-HEADINGS**

Fact AND Argument Sections

18 U.S.C. § 1341; seven counts of wire fraud in violation of 18 U.S.C. § 1343; one count of money laundering in violation of 18 U.S.C. § 1956(a)(1)(B)(i); one count of transaction involving fraud proceeds in violation of 18 U.S.C. § 1957; and forfeiture allegations.

[Indictment 2-9, Document 1.]

B. The Guilty Plea

Mr. Meadows pleaded guilty to 11 of the 12 counts: mail fraud, wire fraud, and transaction involving fraud proceeds. [Amended Judgment in a Criminal Case 1, A1,⁴ Document 186; Plea Hrg. 67.]

At that time, Mr. Meadows disputed that enhancements for sophisticated means and a violation of securities laws should apply. [Plea Hrg. 19, 24.]

C. Imposition of the Original Sentence

1. Sentencing Guidelines rulings

At sentencing, Mr. Meadows agreed to and the court applied enhancements based on specific offense characteristics of a loss amount of nearly \$14 million, more than 75 victims (of which more than 69 lost money), and a victim-related adjustment based on some vulnerable victims. [PSR 14, ¶¶71-73 & A.2, ¶¶3-4; Sent. Hrg. 151, 177.]

⁴ "A" refers to pages of Appellant's Addendum.

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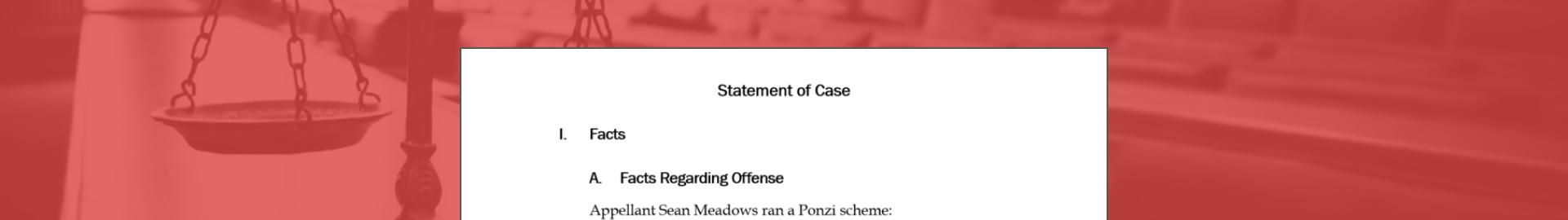
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TIP 7

USE BULLETS AND LISTS



Statement of Case

I. Facts

A. Facts Regarding Offense

Appellant Sean Meadows ran a Ponzi scheme:

- He lied to clients – by telling them that he would place their money in an investment;
- He stole their money – once he received it he never invested it but rather kept it for his own purposes;
- And he spent it to lull other clients and pay for personal things like paying salary, gambling, traveling, and the like. [Plea Hrg.¹ 32-40.]

1. Meadows Financial Group

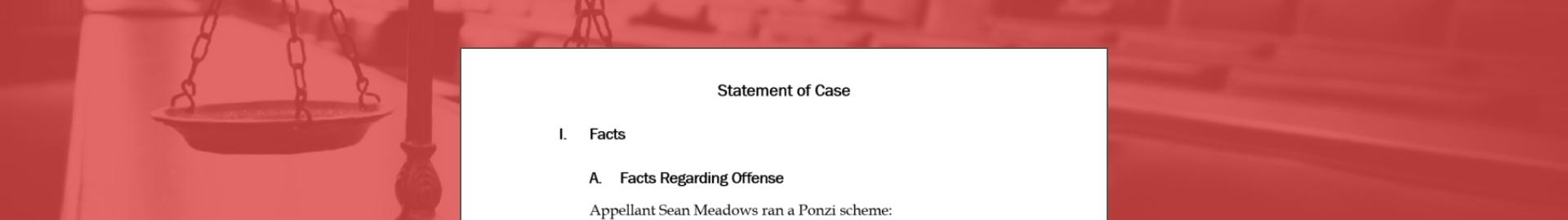
Mr. Meadows was a financial advisor who formed Meadows Financial Group in about 2002. [PSR² 2 ¶7, Document 71; Plea Hrg. 31-32, Document 71.] By 2014 Mr. Meadows had over 100 clients in the states of Minnesota, Indiana, and Arizona. [PSR 2, ¶7; Plea Hrg. 32, 54.]

¹ "Plea Hrg." refers to the transcript of the Change of Plea Hearing that took place on December 10, 2014.

² "PSR" refers to the final Presentence Investigation Report dated March 27, 2015.

TIP 8

BE SHORT. BE SHORT.
DID I SAY BE SHORT?



Statement of Case

I. Facts

A. Facts Regarding Offense

Appellant Sean Meadows ran a Ponzi scheme:

- He lied to clients – by telling them that he would place their money in an investment;
- He stole their money – once he received it he never invested it but rather kept it for his own purposes;
- And he spent it to lull other clients and pay for personal things like paying salary, gambling, traveling, and the like. [Plea Hrg.¹ 32-40.]

1. Meadows Financial Group

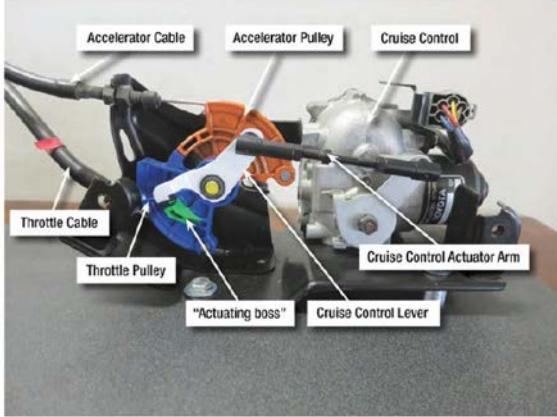
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¹ "Plea Hrg." refers to the transcript of the Change of Plea Hearing that took place on December 10, 2014.

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TIP 9

USE GRAPHICS



These two pulleys rotate around a metal pin, pictured as yellow in the above photograph. RT5, 834:18-835:3. Sitting on the same pin is the cruise control lever, also shown in the above photograph. RT5, 834:22-835:1.

The Cruise Control Lever. The cruise control system is also located underneath the dust cover but operates independently from the dual plastic pulley system. RT5, 837:4-9. There is a rubber tip on the end of the cruise control lever, which is barely distinguishable in the above photograph because it is dark. RT6, 896:1-7. When the car is idling, consistent with the configuration in the above photograph, the tip on the cruise control lever is situated near or against a plastic ramp that protrudes from the side of the

TIP 10

FOLLOW THE RULES!!!

Board of Immigration Appeals

(vii) Fonts and spacing. – Font and type size must be easily readable. “Times New Roman 12 point” font is preferred. Double-spaced text and single-spaced footnotes are also preferred. Both proportionally spaced and monospaced fonts are acceptable.

Practice Manual Rule 3.3(c)(vii)

Compare ...

United States Department of Justice
Executive Office for Immigration Review
United States Immigration Court
Fort Snelling, Minnesota

IN THE MATTER OF:)
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Respondent's Brief in Support of Bond Eligibility

Introduction

Respondent is eligible for bond because he does not meet the mandatory detention requirements of INA § 236(c). Respondent is currently in removal proceedings based on two larceny convictions and a drug conviction. Respondent's 5th Degree drug possession conviction was charged under a state law that includes substances not federally controlled and therefore cannot serve as a grounds for removal under INA § 212(a)(2)(A)(i)(II). One of Respondent's larceny convictions was charged under a state law that requires only an intent to exercise temporary control. Under longstanding precedent, such an offense does not qualify as a crime involving moral turpitude ("CIMT"). Respondent's other larceny conviction—a misdemeanor for which he was sentenced to 90 days detention and for which the maximum penalty did not exceed imprisonment for one year—falls within the CIMT exception in INA §212(a)(2)(A)(ii)(II). For these reasons, Respondent is bond eligible and requests that the Court release him on bond at this time.

United States Department of Justice
Executive Office for Immigration Review
United States Immigration Court
Fort Snelling, Minnesota

IN THE MATTER OF:)
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Why?

- On hearing days, 6-9 cases
- Often 3 briefs each, opinions and orders from court below, addenda

= up to 1,000 pages per argument section

“Reading that much is a chore; remembering it is even harder. **You can improve your chances by making your briefs typographically superior.** It won’t make your arguments better, but **it will ensure that judges grasp and retain your points with less struggle.** That’s a valuable advantage, which you should seize.”



Practitioner’s Handbook for Appeals
to the United States Court of
Appeals for the Seventh Circuit
(2017 edition)

ROBINS  KAPLAN LLP