

Briefing Tips from the Civil Side

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I. Introduction: the growing need for structural tools in briefs.

In the past 25 years, the biggest change in civil appellate briefs has been the growing use of visible structure. At the beginning of that period, most briefs typically used few headings other than for brief sections like “Statement of Facts” and “Argument.” Paragraphs were longer. Text was denser. Visuals were rare. Understanding a brief required reading line-by-line, word-by-word.

Today civil briefs tend to contain:

- more headings;
- more detailed outlines;
- more effective summaries;
- more “white space”;
- shorter paragraphs;
- more numbered lists;
- more tables; and
- more visuals that provide structure for difficult concepts.

What happened?

1 — In the 1990s, many academics who taught legal writing began to draw on research about reader psychology. This research demonstrated the importance of structure in helping legal readers understand complex arguments.¹ When I first heard Duke Professor George Gopen speak at several civil appellate CLE conferences in the 1990s and 2000s, I began to understand how critical the structure of a brief is to win the appeal.

2 — In the late 1990s and early 2000s, screen reading made structure even more important for readers. During this time, most readers transitioned from reading mostly on paper to reading mostly on screens. Researchers in website design discovered that, to find and understand information, screen readers need more help from structure.

Part II of this paper will suggest why today’s courts—and readers generally—need more structure. In particular, it will focus on how screen reading has changed reading habits and heightened the need for visible structure.

Part III will suggest tools for structure in briefs. Many of these tools are based on web design principles and research. They will help today’s readers locate and understand arguments better when reading on either a screen or paper.

¹ See, e.g., JOSEPH M. WILLAIME, *STYLE: TOWARD CLARITY AND GRACE* xvi (1st ed. 1990) (noting that “recent work in educational psychology” has demonstrated the importance of structure in conveying complex information); GEORGE D. GOPEN, *EXPECTATIONS: TEACHING WRITING FROM THE READER’S PERSPECTIVE* xv (2004) (providing guidelines for structure in legal writing based on “psycholinguistic reader expectations”).

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