



Facilitating Our Craft

How Technology Has Improved Legal Writing

By Lawrence S. Ebner

An anyone who began working as a lawyer during the past 20 years probably does not realize the tremendous effect that technology has had on *improving* legal writing. I began researching and drafting legal briefs back in the early 70s. Here is a partial list of what most brief writers *did not have* when I started:

Computerized legal research. Finding relevant case law required hitting the books in an actual (not virtual) law library. This time-consuming task involved stacking up hard-bound volumes and paperback supplements of federal or state case reporters, treatises, law reviews, and other books, and manually scouring through them. Once you found a case to support or rebut a particular point, you would have to search through various editions of Shepard's to identify potentially relevant citations to other cases from the same or other jurisdictions that discussed or cited the case that you found. You then would have to pull those cases off the shelves and study them one by one (without the aid of a computerized search function) to see if they were helpful. Researching pertinent statutes and regulations was similarly challenging. Cite-checking also was an entirely manual chore. Of course, if any books were missing from the library shelves, you were out of luck.

The web. There was no Google or other electronic oracle that could provide you with an instantaneous list of possibly relevant governmental, academic, or private sector sources of information that could be helpful in constructing or presenting a legal or policy argument. Court rules, including local rules governing the content and format of briefs, were not available online since there was no "online." You could only hope that your law library's collection of federal, state, and local court rules was up to date.

Photocopiers and printers. There was no way to download or to print a case, statute, regulation, or other legal authority. And underlining, highlighting, or making marginal notes in a case reporter or other library book was (and still is) a very bad practice. (Post-it notes were not widely available until the 80s.) Attorneys fortunate

enough to have access to a primitive photocopier would struggle to crack open and hold down each page of a book in a way that made slowly duplicated cases or other printed legal material readable.

Word processing. Without question, computerized word processing, which began with the advent of simple "memory" typewriters, is the single most important technological advancement that has improved legal writing. Back in the day, most attorneys would draft briefs or other legal documents by scribbling them on legal pads (or by dictating them off the tops of their heads), and then asking their secretaries to type from the scribbles or dictation. Adding sentences or paragraphs, or reconfiguring their order, on a handwritten or typed page was a messy task that involved the art of cutting and pasting (in point of fact, taping) snips of paper. Editing and proofing a typed draft was not easy either. A skilled legal secretary would know how to make existing words or phrases, or misspellings or typos, more or less disappear with correction fluid (including on any carbon copies), so that she then could type over the whited-out spaces. But for fussy lawyers such as I, a secretary would have to retype an entire page just to make a small correction or other change to create a perfect-looking page. This entire tedious process, which required scissors, tape, correction fluid, and a very cooperative legal secretary, was a practical deterrent to revising and editing a draft.

For this reason, word processing has meant much more to attorneys than that mechanical-sounding term implies. For a lawyer, having the ability to sit at computer screen, simultaneously think, type (or dictate into voice recognition software), and see what he or she wants to say, and then repeatedly reread and easily revise or reconfigure the draft text, was an *enormous* boon that has improved most legal writing dramatically. And that's not all. Having the ability to select or change font style and size, and to draft a brief limited by word count rather than by the number of pages, has made legal briefs much more readable. The ability to italicize rather than underline, to spell check, and to generate an accurate table of authorities, also has made reading briefs a better experience for courts. Embedding hyperlinks into briefs remains a largely underused practice, but making briefs interactive in that manner may be the next big step in the art of written legal persuasion.



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Remote access. Don't feel like spending tonight or this weekend working on a brief at the office? Unlike in the past, that's no problem. Just log into your firm's computer system from home, a client's facility, the beach (well, maybe not from there), or wherever. And there is no need to lug books, cases, legal pads, pens, highlighters, dictation devices, or anything other than your laptop or tablet.

E-mail and ECF. E-mail and work-share programs have made collaborating on a brief much easier, and of course, faster. Circulating a draft for review and comment by clients or colleagues not physically present in your office used to require faxing drafts that would be reproduced on shiny, ammonia-laden paper, or if time permitted, sending them by messenger or even snail mail. Of course, there was no "red-lining" word-processing function. So suggested changes, edits, or comments from others had to be handwritten (often in red ink), deciphered by the brief's author, and then manually incorporated into the final document. The development of "electronic case filing," or "ECF," also has been advantageous to the quality of legal writing since editing and finalizing a brief can continue literally until the eleventh hour on the day that a brief is due without having to worry about the mailbox rule.

These are just some of the ways that compared to 30 or 40 years ago, technology has helped to improve the content, appearance, and overall quality of legal briefs. We baby boomers not only have taken full advantage of today's legal technology, but we also are eagerly awaiting the next innovations that will facilitate the craft of legal brief writing. 