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## BRIEFS ON APPEAL

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### FROM GOOD TO GREAT: THE FOUR STAGES OF EFFECTIVE SELF-EDITING

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#### I. INTRODUCTION

Over twenty years ago, Chief Judge Kozinski of the Ninth Circuit explained the many ways in which poor legal writing can lose a case.<sup>1</sup> He explained, among other things, that to prevent a court from stumbling onto a valid argument, they should all be “buried” and “unintelligible,” and instructed would-be losing attorneys to “[u]se convoluted sentences” and to “leave out the verb, the subject, or both.” He advised them to “[a]void periods like the plague,” to “[b]e generous with legal jargon,” and to “use plenty of Latin . . . acronyms . . . [and] bureaucratese.” And

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1. Alex Kozinski, *The Wrong Stuff*, 1992 BYU L. Rev. 325.

after quoting an example, he concluded by noting that, “[e]ven if there was a winning argument buried in the midst of that gobbledygoop, it was DOA.”<sup>2</sup>

To help your briefs avoid being declared DOA, this article suggests a systematic approach to self-editing. First, I discuss the danger that all appellate litigators face—overworked courts that are increasingly impatient with poor legal writing—and present some painful examples of poor writing. I then suggest that the overload in the courts is an opportunity to be seized through use of an editing process that involves more than looking for typos and errors in citation form. Just as Bryan Garner advocates the now familiar Madman-Architect-Carpenter-Judge paradigm as an approach to legal writing, I suggest that the editing process should likewise be divided into distinct steps. I believe that the editor should focus individually on the draft’s substance like a law clerk, on its organization like a logician, on its style like an artist, and on its mistakes like a law-reviewer would.

## II. THE DANGER YOU FACE, AND THE RESULTING OPPORTUNITY

Judges are overwhelmed. In the twelve-month period ending March 31, 2013, 56,453 appeals were filed in the federal courts of appeals.<sup>3</sup> Given this volume—and the fact that the great majority of the courts’ interactions with litigants is through written work product—judges are understandably impatient with poor legal writing. The judges’ job is difficult enough without having to decipher what a sloppy, unorganized, and unclear brief is trying to communicate. At best, when faced with an unhelpful

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2. *Id.* at 327–28.

3. See Administrative Office of the United States Courts, *Caseload Statistics 2013, Table B: U.S. Courts of Appeals—Appeals Commenced, Terminated, and Pending During the 12-Month Periods Ending March 31, 2012 and 2013*, <http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/Statistics/FederalJudicialCaseloadStatistics/2013/tables/B00Mar13.pdf> (accessed Feb. 11, 2014; copy on file with Journal of Appellate Practice and Process). Indeed, filings have risen thirty-four percent in the federal courts of appeals since 1990, leading the Judicial Conference Committee on Judicial Resources to recommend that Congress establish ninety-one new judgeships in the courts of appeals and the district courts. See *Third Branch News, Caseload Increases Stress Need for New Federal Judgeships*, <http://news.uscourts.gov/caseload-increases-stress-need-new-federal-judgeships> (Sept. 10, 2013) (accessed Feb. 25, 2014; copy on file with Journal of Appellate Practice and Process).

brief, a judge will simply choose the shorter, easier path of setting the brief aside (and perhaps also adopting the perspective suggested by the opposing brief). When that happens, of course, the lawyer loses all ability to persuade. At worst, however, the shoddy work product results in serious negative consequences for the lawyer and the client.

Case law is replete with cautionary tales demonstrating this reality. Recently, the First Circuit dismissed an appeal because the appellant's brief failed repeatedly to give the court what the rules required.<sup>4</sup> The court explained that "busy appellate judges depend on counsel to help bring issues into sharp focus," yet the appellant's brief "offer[ed] *no* specific record cites to support her version of the facts, which . . . she allege[d] are in dispute."<sup>5</sup> To make matters worse, the brief "provid[ed] neither the necessary caselaw nor reasoned analysis to support her theories."<sup>6</sup> Under these circumstances, the court concluded that the lawyer's work did not reflect "the type of serious effort that allows [a court] to decide difficult questions," and noted that "doing her work for her [was] not an option, since that would divert precious judge-time from other litigants who could have their cases resolved thoughtfully and expeditiously because they followed the rules."<sup>7</sup>

Similarly, *Sanches v. Carrollton-Farmers Branch Independent School District*<sup>8</sup> provides a stark example of the extent to which errors and tone can distract from the merits of a brief. After quoting a portion of the appellant's brief that it characterized as an "unjustified and most unprofessional and disrespectful attack on the judicial process" and the magistrate judge assigned to the case below, the court noted that several sentences in the brief were "so poorly written that it is difficult to decipher what the attorneys mean."<sup>9</sup> The court continued by noting that "[u]sually we do not comment on technical and grammatical errors, because anyone can make such an occasional mistake," but then proceeded to observe that "here

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4. *Rodriguez-Machado v. Shinseki*, 700 F.3d 48 (1st Cir. 2012).

5. *Id.* at 49 (emphasis in original).

6. *Id.*

7. *Id.* at 50 (citations omitted).

8. 647 F.3d 156 (5th Cir. 2011).

9. *Id.* at 172.

the miscues are so egregious and obvious that an average fourth grader would have avoided most of them.”<sup>10</sup> Specifically, the court pointed out examples of misspellings, a lack of subject-verb agreement, and that “Magistrate Judge Stickney is referred to as ‘it’ instead of ‘he’ and is called a ‘magistrate’ instead of a ‘magistrate judge.’” Finally, the court complained that “the sentence containing the word ‘incompetence’ makes no sense as a matter of standard English prose, so it is not reasonably possible to understand the thought, if any, that is being conveyed.”<sup>11</sup> Imagine that opinion landing in your inbox. And then picture yourself discussing it with your client.

One final example shows that, at times, poor writing may even result in sanctions and a finding of misconduct. In *Thul v. OneWest Bank*,<sup>12</sup> defense counsel moved to dismiss the case, but their motion failed to cite a recent, binding Seventh Circuit opinion. After denying the motion, the court ordered defense counsel to show cause why they should not be sanctioned.<sup>13</sup> In response, defense counsel asserted that they viewed the omitted case as distinguishable, but the court disagreed, noting that although the lawyers might have been persuaded that the omitted case “was distinguishable in some way, . . . the Seventh Circuit has made it clear that the tactic ‘of pretending that potentially dispositive authority against a litigant’s contention does not exist is as unprofessional as it is pointless.’”<sup>14</sup> The court concluded that sanctions were not necessary, largely because defense counsel took responsibility for their conduct and had been named in a publicly available document, which is, as the court put it, “of no small consequence to a professional whose reputation ‘is his or her bread and butter.’”<sup>15</sup>

These examples make clear that the judiciary is increasingly impatient and irritated with attorneys who impede the courts’ ability to manage high caseloads by filing poorly

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10. *Id.* at 172 n. 13.

11. *Id.*

12. 2013 WL 24599 (N.D. Ill. Jan. 2, 2013), *vacated*, 2013 WL 212926 (N.D. Ill. Jan. 18, 2013).

13. *Id.* at \*2–\*3.

14. *Thul v. OneWest Bank*, 2013 WL 212926, at \*2 (N.D. Ill. Jan. 18, 2013) (quoting *Hill v. Norfolk & Western Ry.*, 814 F.2d 1192, 1198 (7th Cir. 1987)).

15. *Id.* at \*3 (quoting *Harlyn Sales Corp. Profit Sharing Plan v. Kemper Fin. Servs., Inc.*, 9 F.3d 1263, 1269 (7th Cir. 1993)).

written, unhelpful briefs. Ironically, however, this reality creates an opportunity for those who are willing to put in the time and work necessary to craft clean, organized, and thorough briefs. If you are focused on helping the court by presenting a high-quality brief, your work will stand in stark contrast to the legions of poorly written briefs. The court will appreciate the effort and be much more likely to rely on your representations and to consider your arguments carefully. And of course those arguments will be more easily understood and more likely to resonate with your judges.

To fully seize this opportunity, writers must combine many skills acquired and honed over time. One critical aspect in the process is self-editing. It is so critical that I suggest it be split into distinct steps or stages. Only then can you get the most benefit out of the process, give the court the best possible briefs, and put your clients in the best possible position to win.

### III. THE FOUR STAGES OF EFFECTIVE SELF-EDITING

In 1979, a University of Texas professor introduced a systematic approach to the writing process, proposing that writers should break the process into four distinct steps or roles: madman, architect, carpenter, and judge.<sup>16</sup> The madman brainstorms the ideas and identifies all possible subjects that could be covered. The architect transforms those ideas into an outline. Taking the outline as the blueprint, the carpenter drafts the piece, connecting the ideas in the outline securely to one another. Finally, the judge engages in quality control, cleaning and polishing the draft.

Bryan Garner, of course, brought this process into the legal world.<sup>17</sup> By introducing a process with four distinct steps, he gave lawyers a systematic approach to writing that could be applied to every writing project. The benefits are too many to discuss here, but one primary benefit is that the system “breaks the writing task down into manageable stages and allows you to

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16. See Betty S. Flowers, *Madman, Architect, Carpenter, Judge: Roles and the Writing Process*, 44 Proc. of the Conf. of College Teachers of English 7–10 (1979).

17. Bryan A. Garner, *The Winning Brief* 4–6 (2d ed., Oxford U. Press 2004) [hereinafter, Garner, *Winning Brief*]; Bryan A. Garner, *Legal Writing in Plain English* 5–10 (U. Chi. Press 2001).

enjoy each stage; that is, it shows you how to do one thing at a time.”<sup>18</sup>

This article suggests a similar systematic approach to editing. Just as too many legal writers once viewed writing as only the drafting process, too many view the editing process as simply looking for typos and errors in citation form. By limiting their understanding of the editing process to matters of usage and style, writers fail to get the most out of their work and increase the risk of their becoming the next in that long line of cautionary tales.

Editing should be broken into four stages—reviewing separately for substance, organization, style, and mistakes. Depending on the quality of your first draft, some of these steps may not take long to complete. If you excel as an architect, for example, reviewing the brief for organization may be fairly cursory to reconfirm your desired approach. But each step should be taken separately because each focuses on a critical aspect of your document that deserves—and requires—your undivided attention. It is the rare legal writer who can effectively and simultaneously analyze (1) whether the brief considers all relevant legal authority, applies it in the most persuasive manner, and includes the necessary counter-arguments; (2) whether a specific paragraph would have more impact if it were moved up or down in the document; (3) whether the writing is sufficiently clear, from sentence to sentence and paragraph to paragraph; and (4) whether every citation is in the form required by the relevant citation rule.

#### *A. Law Clerk—Edit for Substance*

The first stage of the editing process answers the most basic, but also the most important, question: Is everything that I have represented to the court accurate? Approach your draft as though you were the law clerk tasked with summarizing the issue, the facts, and the law to the court. A good law clerk will immediately determine whether the facts are fairly presented, the law is stated correctly, and the application of the law to the facts is sensible and supported by relevant statutory or case law

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18. Garner, *Winning Brief*, *supra* n. 17, at 7.

authority. A clerk's nightmare is providing inaccurate factual or legal information to his or her judge, and you should fear doing the same. Thus, you must address the following topics.

### 1. *Factual Accuracy*

The quickest way to get the court to ignore anything you have to say is to make an inaccurate or misleading factual representation. When a judge or clerk discovers even a single misrepresentation, you lose the benefit of the doubt. The legal analysis that follows your fact section may be brilliant, but the judge is unlikely to read it closely, much less rely on it, because the court no longer trusts you. As a result, you must be scrupulous when stating the facts. Specifically, you must:

- Ensure that you tell the court the factual and procedural story—everything it needs to know to resolve the issue, but nothing more;
- Confirm that a record cite accompanies each factual assertion and that the record actually says what you say it says;
- Place record cites after each sentence, as opposed to putting one long string cite of many pages at the end of a paragraph;
- Be particularly careful not to overstate the facts with hyperbole or embellishment—the siren song that many lawyers fail to resist; and
- Address the bad facts. Although this is counter-intuitive, your discussion of the information most unfavorable to your client's position may be the most important part of your statement of facts.

### 2. *Legal Accuracy*

Like making sure that you have the facts correct, ensuring the accuracy of your recitation of the law is paramount. Yet lawyers repeatedly fail to bring relevant, even binding, authority

to the court's attention. You must put in the time and effort to fully understand the law at issue. When you do so, your brief will do more than simply state an applicable rule of law. It will explain what the rule really means and give examples of its application. It will make complex matters simple and accessible, recognizing that most judicial readers are generalists who do not have the same level of experience and expertise in the area being discussed as you do. Finally, your brief will identify and distinguish contrary authority.

### 3. *Sensible, Supported Analysis*

Most judges are uncomfortable making new law or being the first to decide an issue. They are certainly uncomfortable making decisions that do not seem to square with common sense. Thus, you must step back and ask yourself what you are really saying to the court. If your argument wins the day, what are the ramifications of the court's decision in this context and others? You should be able to explain how your position is not only supported by the law, but is also the right result. On the other hand, anticipate any discomfort the court may have with your position and address it proactively. Additionally, you must provide, whenever possible, case law examples showing that other courts have reached the same conclusion under similar circumstances. Even if those examples are non-binding, it is helpful to provide the court with examples of other courts that, under similar circumstances, reached the conclusion that you are requesting.

### 4. *Responsiveness*

If you are responding to an opening brief, make sure that your draft answers each of your opposition's arguments. This is not to say that your response is limited to answering the points made by your opponent. To the contrary, play offense first, telling the court why you should win before telling the court why opposing counsel's arguments miss the mark. But at some point you must respond. Otherwise, the court will view the response as incomplete, and it could conclude that your silence indicates that the unanswered argument has legs.

## 5. *Alternative Arguments*

Does your draft include all possible paths to victory? Can the court assume that some or all of your opponent's argument is true, yet still rule in your favor? Alternative arguments can be highly effective, and you must ensure that you have considered those available to you. They can take the wind out of your opponent's sails and allow the court to avoid having to decide disputed issues. Always remember that judges are human: Most will appreciate your showing them a shorter, simpler way to complete their task.

### *B. Logician—Edit for Organization*

During this stage, examine your draft at a structural level and ask yourself whether its argument proceeds in the most logical manner. As a legal writer, you are often tasked with presenting highly complex factual scenarios and legal principles. The golden rule is to make the reader's job as easy as possible, and this depends heavily on the order in which you present the material. You are, in effect, asking the court to go on a journey that you are leading, and you want to encounter as little resistance or confusion during the journey as possible. Thus, your points should pull the reading judge smoothly along because they move so logically from one to another.

One of the best ways to ensure that your draft is well organized is to use headings in both the statement of facts (where your headings should be descriptive) and the argument (where your headings should be argumentative, making your position clear). Using headings forces you to present material in an organized manner, and they serve as signposts for the reader when it is time to switch topics. And it also helps you see whether your arguments are in the right—which is to say the logical—order.

With few exceptions, a statement of facts should be organized in chronological order. Do not go witness-by-witness, for example, in attempting to explain the facts. While trial lawyers are forced to gather and present information this way, those limitations do not apply to appellate lawyers writing to a judge. You should start at the beginning and simply tell the

story, citing to multiple witnesses' testimony about a single issue when necessary.

For the argument's structure, there are many schools of thought. Most lawyers are familiar with the IRAC model—Issue, Rule, Application, Conclusion. Many alternative acronyms abound, but I was taught, and still use, CREACC—Conclusion, Rule, Explanation (of the rule), Application, Counter-argument, and Conclusion. Although the acronym is not nearly as catchy as others, the primary benefit of CREACC is that it reminds you to include an explanation of the rule, typically through discussion of cases that bring the rule to life. It also reminds you to dedicate a place in the brief for addressing the opposition's arguments through counter-argument. Finally, it reminds you to place a big-picture theme or conclusion at both the beginning and the end.

### *C. Artist—Edit for Style*

Once your inner law clerk and logician have done their work, it is time to focus at the paragraph and sentence levels to ensure that your ideas are communicated clearly. This is the “artist” stage, where you rework paragraph and sentence structure in order to paint the clearest possible picture for the court. There are many indispensable books covering this step in detail and providing various useful tips,<sup>19</sup> so I will not attempt to give a comprehensive list of the many do's and don'ts. Instead, I will focus on mistakes that cause the most damage and provide tips that should have the greatest immediate impact.

#### *1. Use Topic Sentences*

Although most of us were taught in junior high that topic sentences should be used in every paragraph because they are effective, many appellate lawyers seem to have forgotten this important lesson. But topic sentences are especially critical in legal writing, providing the court with point-by-point guidance, setting expectations, and helping the judicial reader understand the piece's structure and content. For those who have fallen out

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19. E.g. Gamer, *Winning Brief*, *supra* n. 17.

of the habit of using topic sentences, the problem is easily corrected as long as you recognize their importance and identify topic sentences—or their absence—as you edit.

A new paragraph signals a shift in focus, causing readers to ask, “What’s next?” A topic sentence answers that question by summarizing the point that you are about to convey. It also limits what you include in the paragraph. Generally, readers should be able to read only the topic sentence of each paragraph and understand the argument expressed in it.

Topic sentences are particularly important when you discuss the relevant case law. The court is not reading about the cases you cite for fun. If you are bringing a case to the court’s attention, you should tell the court upfront why you are doing so. Tell your reader in the topic sentence why it is worth reading the remainder of the paragraph. Too often lawyers start paragraph after paragraph with the generic “In *Smith v. Jones*, the court held . . .” format, which does nothing to highlight the importance of the case and its relevance to the decision that the court is called upon to make. To the contrary, in fact, “few things are more boring” than a long series of pages on which every paragraph starts “‘In *A v. B* . . . ’; ‘In *C v. D* . . . ’; ‘In *E v. F* . . . .’ By the third one, the reader feels like saying ‘who cares?’ Add a little zip to these paragraphs by a strong lead-in sentence.”<sup>20</sup>

Consider, for example, the zip factor of these three sequential topic sentences taken from an appellate brief’s discussion of relevant case law:

The Fifth Circuit has routinely rejected Smith’s argument. In *X v. Y*, for example, the Fifth Circuit held that . . .

The Court reached the same conclusion and embraced the government’s position in *A v. B*. . . .

Contrary to Smith’s assertion otherwise, *C v. D* does not undermine the government’s position. There, . . .

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20. Paula Samuelson, *Good Legal Writing: Of Orwell and Window Panes*, 46 U. Pitt. L. Rev. 149, 159 (1984).

Just from reading those three sentences, the judge will understand that the court has already rejected an argument like the one that the appellant advances in this case, that its doing so was no fluke, and that the supposedly pivotal case cited by the appellant does not distinguish this case from those in which the appellant's argument has already been rejected.

## 2. *Keep Sentences and Paragraphs Short*

Reading dense legal material is hard, especially for a court that is juggling a heavy caseload and has twenty more briefs to read after yours. Make the court's job easier by shortening sentences and paragraphs. Break long, compound sentences into stand-alone thoughts that build on one another. Paragraphs should rarely be longer than one full page. When a paragraph goes on that long, ask yourself whether it is really making only one point. If so, shorten it sentence by sentence to make it fit on less than a page. And if it is in fact making more than one point, break it into two paragraphs.

This exercise should also shorten the overall length of your brief, an admirable goal. Judge Kozinski explained that if you want to lose your appeal, you should "tell the judges right up front that you have a rotten case. The best way to do this is to write a fat brief." And he also pointed out that "simple arguments are winning arguments [and] convoluted arguments are sleeping pills on paper."<sup>21</sup>

## 3. *Create Visual Diversity*

Like the rest of us, judges and law clerks appreciate prose that is broken up with a bullet-point list, a graph, or an exhibit. With modern word-processing tools at your fingertips, there is no excuse for not adding them when appropriate. Your readers will appreciate it.

In addition to being visually pleasing, these techniques will also make your brief more persuasive. For example, using a bullet-point list when summarizing the five key pieces of evidence that undermine your opponent's argument is much

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21. Kozinski, *supra* n. 1, at 326.

more effective than putting that information in a traditional paragraph. The bullet points create a sense of momentum and volume, and make the material easier to reference and remember. Similarly, pasting an exhibit into your brief builds on the accepted truth that a picture is sometimes worth a thousand words. Pasting a map of the scene into the brief is much easier—and more effective—than trying to describe it. Including critical exhibits in your brief also means they will be available if necessary during oral argument, giving you a much cleaner way to reference exhibits than clumsy hand-ups to the bench.

#### 4. *Avoid Block Quotations*

Lawyers absolutely love using block quotations, which is ironic given that many judges have admitted that they do not read them. For ineffective writing, Judge Kozinski says that “[b]lock quotes . . . are a must” because “they take up a lot of space but nobody reads them.”<sup>22</sup> But of course he believes that “if the block quote really had something useful in it, the lawyer would have given me a pithy paraphrase.”<sup>23</sup>

My theory is that lawyers use block quotations either because doing so is easier than understanding the point of law and explaining it to the court, or out of an ill-advised sense that they are an expected part of any appellate brief. But you must resist them. If the quotation is important enough to include, then it is important enough to shorten and summarize. An effective way to do this is to explain and unpack a long quote. Here is an example of the explain-and-unpack method that shows a “before” version using a block quotation and an “after” version that weaves the essence of the quotation into a paragraph of text:

The before:

In *Tapia*, the Supreme Court explained:

We note first what we do not disapprove about Tapia’s sentencing. A court commits no error by discussing the opportunities for rehabilitation within

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22. *Id.*

23. *Id.*

prison or the benefits of specific treatment or training programs. To the contrary, a court properly may address a person who is about to begin a prison term about these important matters. And as noted earlier, a court may urge the BOP to place an offender in a prison treatment program.

*Id.* at 2392.

And the after:

The Supreme Court explained in *Tapia* that despite the general prohibition against relying on rehabilitative opportunities, district courts do not err by discussing the rehabilitative opportunities within prison or by urging the BOP to place an offender in a treatment program. The Court noted that “[a] court commits no error by discussing the opportunities for rehabilitation within prison or the benefits of specific treatment or training programs.” *Id.* at 2392. In fact, “a court properly may address a person who is about to begin a prison term about these important matters.” *Id.* Finally, the Court made clear that “a court may urge the BOP to place an offender in a prison treatment program.” *Id.*

In the second example, the writer explains in the topic sentence what the quote really means. This maximizes the chance that the reading judge (1) will understand the critical point, and (2) will continue reading the paragraph—including the quotations—because the first sentence of the paragraph indicates why the rest of the material in it is important.

##### 5. *Do Not Bury Your Gems in Parentheticals*

Like block quotes, quotations in parentheticals following a case cite are less likely to be read, in large part, perhaps, because they are harder to find. If you like the quote enough to include it in a parenthetical, move it instead to a stand-alone sentence, followed by the case cite. The rule applies especially to string cites with parentheticals containing good quotations. Comparing the following paragraphs will illustrate this point.

Here is the “before” version, which includes parentheticals:

*Pickar's* holding is not unique. See *United States v. Blackmon*, 662 F.3d 981, 987–88 (8th Cir. 2011) (holding that the third prong was not met because “it is uncertain whether Blackmon would have received a lighter sentence if the district court had not [considered Blackmon’s rehabilitative needs]”); *United States v. Lewis*, 459 F. Appx. 742, 744 (10th Cir. 2012) (“While the district court admittedly mentioned rehabilitation as one ground for imposing its sentence, Mr. Lewis has suggested nothing in the record to indicate that, absent this error, the district court would have imposed a lower sentence.”); *United States v. Cardenas-Mireles*, 446 F. Appx. 991, 994–95 (10th Cir. 2011) (finding no plain error because “[b]ased on the record, we cannot say the court’s consideration of Cardenas-Mireles’s health actually altered his sentence”).

And here is the “after” version, in which the strongest points have been woven into the text:

*Pickar's* holding is not unique. In *United States v. Blackmon*, for example, the Eighth Circuit held that the third prong was not met because “it is uncertain whether Blackmon would have received a lighter sentence if the district court had not [considered Blackmon’s rehabilitative needs].” 662 F.3d 981, 987-88 (8th Cir. 2011). Similarly, in *United States v. Lewis*, the Tenth Circuit likewise found the third prong unsatisfied: “While the district court admittedly mentioned rehabilitation as one ground for imposing its sentence, Mr. Lewis has suggested nothing in the record to indicate that, absent this error, the district court would have imposed a lower sentence.” 459 F. Appx. 742, 744 (10th Cir. 2012). Finally, the Tenth Circuit, in *United States v. Cardenas-Mireles*, found no plain error because “[b]ased on the record,” it could not say that “the court’s consideration of Cardenas-Mireles’s health actually altered his sentence.” 446 F. Appx. 991, 994–95 (10th Cir. 2011).

The second paragraph is much more reader-friendly. Instead of asking the court to wade through the unavoidably dense language of a string citation, which it is unlikely to do, the paragraph walks the court through the relevant cases and pulls out the important language. This is more polite and more effective.

## 6. *Mind the Gaps*

Wholly aside from what your document says, how it looks is important. A brief with inconsistent formatting, dangling lines of text, and large blocks of white space caused by unnecessary page or section breaks appears sloppy and thrown together. The danger, of course, is that the court will assume that your legal analysis received the same inadequate level of care. Thus, you should always print your document when it gets close to being final, examine the overall appearance of each page, and change any odd or inconsistent formatting that lessens its good looks.

### *D. Law-Reviewer—Edit for Usage and Mistakes*

The final stage is the one most associated with editing—correcting typographical and grammatical errors. Some people enjoy this step, and many do not, but all legal writers must recognize that these little things matter. You must care about them because judges and law clerks do. Additionally, if you do not demonstrate to the court that you can get the little things like consistent citation form and the elimination of typos correct, then it is less likely to trust you with the big things like whether summary judgment is appropriate or the trial court should be reversed.

The good news is that you do not have to memorize an entire citation guide and every rule of grammar. If you are cognizant of the importance of producing a clean, polished brief, you should be able to edit closely enough to spot possible mistakes and ensure proper form. While editing, have your citation guide and usage manuals handy and refer to them often, even if only to confirm that you are correct.

Remember that a good secondary editor is particularly important for identifying typos and grammatical mistakes. Avoid giving your draft to an easy grader. Although a tough editor is harder on your ego and forces you to do more work, the resulting brief will be better for it.

## IV. CONCLUSION

In light of the courts' high caseload and the high stakes involved—both for the lawyer and the client—filing anything other than a clean, organized, and thorough brief is simply not an option. But producing exceptional legal writing takes much more than one final, quick review of your draft for simple mistakes. The way to ensure that your brief rises above the rest—as a helpful, persuasive respite from the endless onslaught of poor writing—is to break the editing process into stages. You must focus individually on substance, organization, style, and mistakes because it is simply too difficult to do everything at once. Just as Madman-Architect-Carpenter-Judge helped so many legal writers increase their efficiency and the quality of their drafts, I hope that Law Clerk-Logician-Artist-Law-Reviewer helps you become a better editor.

