

A Brief Article on Electronic Briefs

Steve Leben

I was sitting in my office, minding my own business, on July 5, 2000. As it was the day following a holiday, things were quite peaceful and I was able to catch up on a lot of paperwork. Then, right at the end of the day, a messenger dropped off at my chambers a copy of one of those motions everybody hates to get—a summary-judgment motion that, with supporting materials, can only be measured in inches. By the time the motions, cross-motions, and responses all were filed over the next few weeks, we had a stack 17 inches high.

A few days later, as I recall, I received a much smaller envelope from the attorney for the defendants, who had filed the first summary judgment motion. It contained a cover letter and a single CD-ROM. The cover letter told me that these attorneys were proud to present me with what they said was the first electronic brief to be filed in a Kansas state court. Since no one I know keeps track of such things, I can't tell you whether they were right in that claim. What I can tell you, however, is that it made handling the case much, much easier.

These electronic briefs contained the entirety of the 17-inch pile of paper that had been filed with the court clerk. They also contained much more. Every case and statute cited in the briefs was included as well; these could be viewed merely by clicking on the case or statute name in the text of the brief. The same was true for factual information: all deposition transcripts, interrogatory answers, and pleading excerpts were included and easily accessible. In addition, some of the depositions had been videotaped. For those, the cited testimony excerpts actually could be viewed from videotape excerpts included on the CD-ROM.

Videotape excerpts, I can tell you, *do* make a more vivid impression than the cold transcripts do. In the electronic briefs, your clue that a videotape excerpt is available would be a small box containing the photo of the witness. When you click on that box, the video excerpt would play. Whenever I would review the factual section of the brief, having those photos next to the statements was itself helpful in just keeping track of which witnesses said what.

Beyond that, the sheer convenience of having three CD-ROMs (covering briefs filed over a period of weeks), each 1/16-inch thick, rather than a 17-inch stack of paper is great. My law clerk and I were both able to take the full set of materials home—and we could both do so at the same time without the need to kill even more trees or spend a day at the copy machine.

The appellate briefs in the *U.S. v. Microsoft* case, excerpts of which are reprinted here, were produced in an electronic format by RealLegal, a Denver-based firm (found on the Web at www.RealLegal.com). RealLegal has produced a redacted, publicly available CD-ROM of the opening brief by Microsoft. You can get a copy of it from RealLegal (303-584-9988) if you want to see for yourself how this works. That CD-ROM contains 6,764 hyperlinks to cases, testimony, and other source material, 12,250 pages of transcripts, 317 exhibits, and 27 minutes of video. The version submitted to the court, which included confidential materials received under seal by the trial court, had an even more comprehensive set of materials.

Only a few years ago, some courts actually rejected electronic briefing altogether. The tide has turned, however, and I would think that any judge who is able to use a computer even a little bit would be happy to receive one in any document-intensive case. The Supreme Court of Washington said as much last year in its opinion in *Aluminum Co. of America (ALCOA) v. Aetna Casualty & Surety Co.*, in which the record took up “about 50 banker’s boxes.” In its opinion, the court “express[ed] sincere appreciation” for the submission of electronic briefs, noting that “[t]he savings to the Court in time-motion efforts alone enabled us to retrieve and examine relevant parts of the record with ease.”

The next time you're sitting in your chambers, minding your own business, when a large stack of motion papers arrives, just hope it's accompanied by an electronic version.

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