

# PUTTING THE "APP" IN APPELLATE PRACTICE

---

Blake Hawthorne

Rich Phillips

Don Cruse

# Electronic Copy of Materials

SCOTXBlog:

[www.scotxblog.com](http://www.scotxblog.com)

Texas Appellate Watch Blog:

[www.TexasAppellateWatch.typepad.com](http://www.TexasAppellateWatch.typepad.com)

# Reading Apps



iBooks



LegalViewer

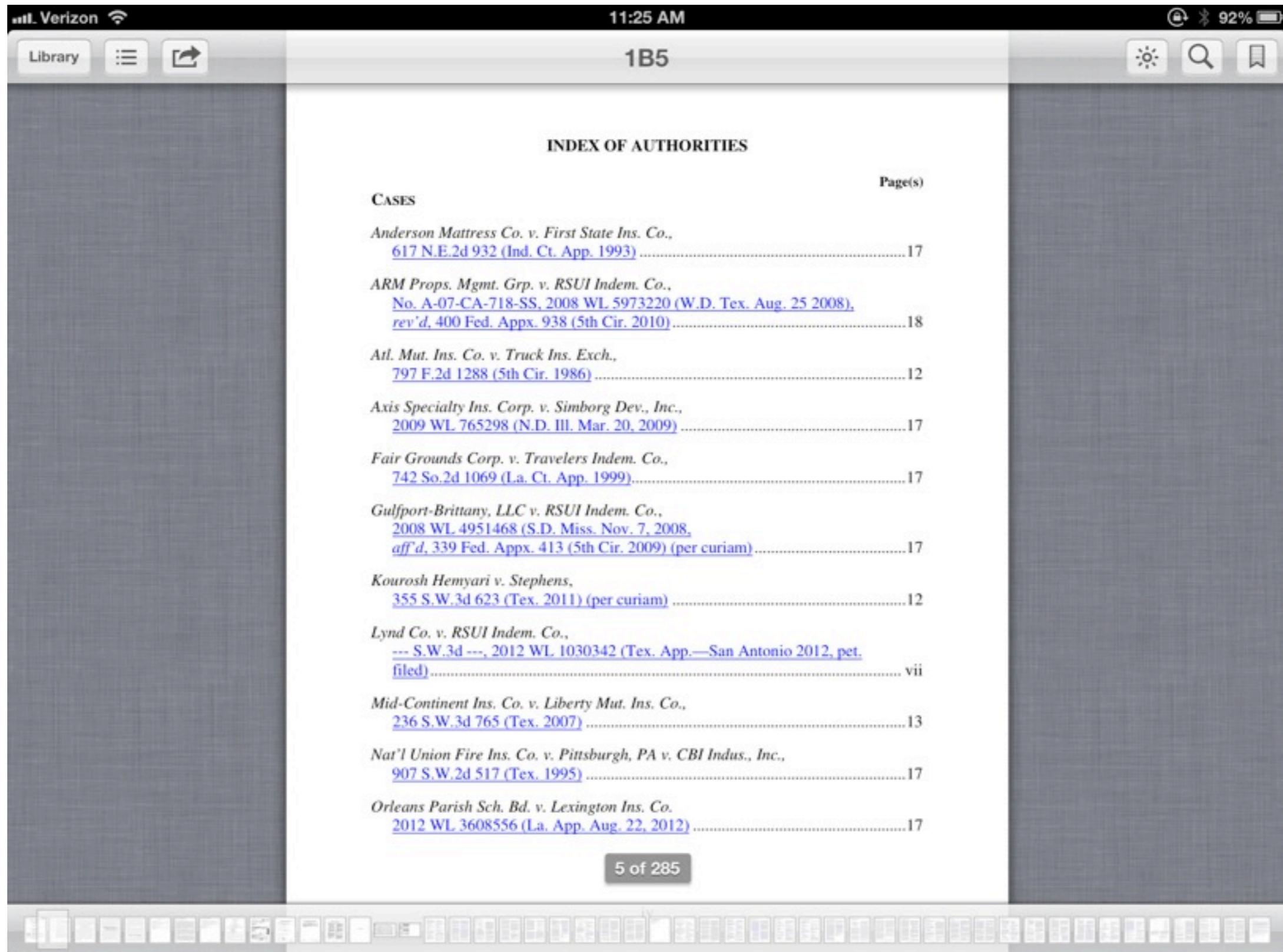


GoodReader



iAnnotate PDF

# iBooks



# LegalViewer

Verizon 11:56 AM 85%

Documents 7ztmvyar.stm

Search

Inbox

QuickStartGuide

SavedFiles

7ztmvyar.stm

13 April 12 P3:39  
BLAKE. A. HAWTHORNE  
CLERK

## NO. 12-0667

IN THE SUPREME COURT OF TEXAS

*Texas Medical Association,*  
Petitioner,

v.

*Texas Board of Chiropractic Examiners, Yvette Yarbrough, Executive Director,  
and Texas Chiropractic Association,*  
Respondents.

**RESPONDENT TEXAS CHIROPRACTIC ASSOCIATION'S  
BRIEF ON THE MERITS**

RIGGS ALESHIRE & RAY, P.C.  
Jason Ray  
jray@r-alaw.com  
State Bar No. 24000511  
700 Lavaca Street  
Suite 900  
Austin, Texas 78701  
512.457.9806  
512.457.9006 (Facsimile)

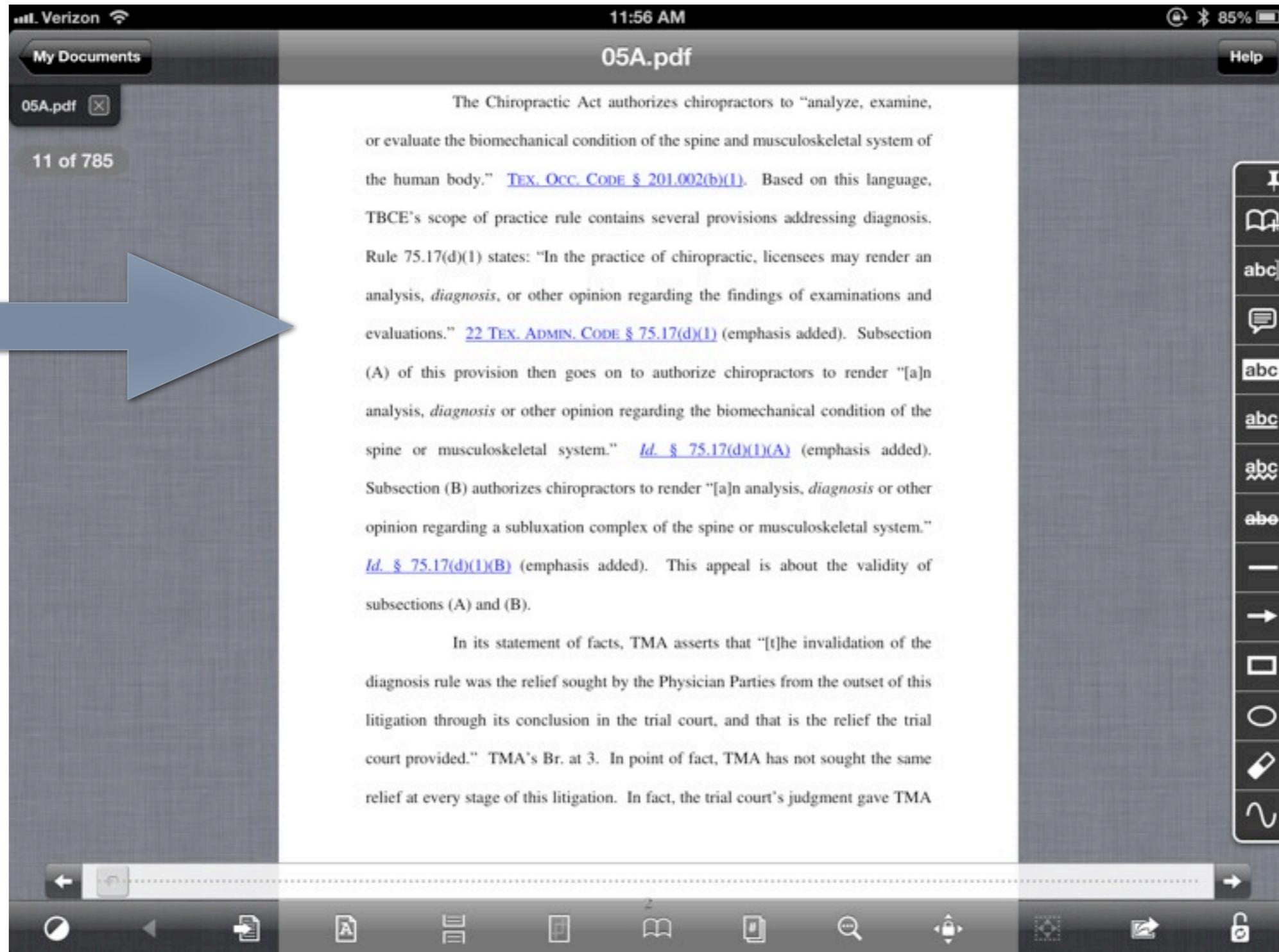
BAKER BOTTS L.L.P.  
Thomas R. Phillips  
tom.phillips@bakerbotts.com  
State Bar No. 00000102  
Matt C. Wood  
matt.wood@bakerbotts.com  
State Bar No. 24066306  
98 San Jacinto Blvd., Suite 1500  
Austin, Texas 78701  
512.322.2565  
512.322.8363 (Facsimile)

ATTORNEYS FOR RESPONDENT  
TEXAS CHIROPRACTIC ASSOCIATION

1 of 785

box

# GoodReader



Hyperlinks





# iAnnotate PDF

Hyperlinks

The screenshot shows the iAnnotate PDF app interface. At the top, the status bar displays 'Verizon', signal strength, Wi-Fi, and battery at 84%. The app's navigation bar shows three tabs: '1 CR', 'Draft Charge', and '05A'. On the left, a table of contents is visible with sections: 'TABLE OF CONTENTS' (2), 'INDEX OF' (partially visible), 'STATEMENT OF JURISDICTION' (7), 'ISSUES PRESENTED' (9), 'STATEMENT OF FACTS' (10), 'SUMMARY OF THE ARGUMENT' (15), 'ARGUMENT' (18) with a blue arrow icon, and 'PRAYER' (48). The main document area displays a paragraph of text with several blue hyperlinks: 'TEX. OCC. CODE § 201.002(b)(1)', '22 TEX. ADMIN. CODE § 75.17(d)(1)', 'Id. § 75.17(d)(1)(A)', and 'Id. § 75.17(d)(1)(B)'. A vertical toolbar on the right contains various annotation tools like a pencil, eraser, highlighter, and a keyboard icon. The text in the document reads: "The Chiropractic Act authorizes chiropractors to “analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body.” [TEX. OCC. CODE § 201.002\(b\)\(1\)](#). Based on this language, TBCE’s scope of practice rule contains several provisions addressing diagnosis. Rule 75.17(d)(1) states: “In the practice of chiropractic, licensees may render an analysis, *diagnosis*, or other opinion regarding the findings of examinations and evaluations.” [22 TEX. ADMIN. CODE § 75.17\(d\)\(1\)](#) (emphasis added). Subsection (A) of this provision then goes on to authorize chiropractors to render “[a]n analysis, *diagnosis* or other opinion regarding the biomechanical condition of the spine or musculoskeletal system.” [Id. § 75.17\(d\)\(1\)\(A\)](#) (emphasis added). Subsection (B) authorizes chiropractors to render “[a]n analysis, *diagnosis* or other opinion regarding a subluxation complex of the spine or musculoskeletal system.” [Id. § 75.17\(d\)\(1\)\(B\)](#) (emphasis added). This appeal is about the validity of subsections (A) and (B).  
  
In its statement of facts, TMA asserts that “[t]he invalidation of the

# iAnnotate PDF

The screenshot displays the iAnnotate PDF application interface. At the top, the status bar shows 'Verizon', signal strength, Wi-Fi, and the time '1:13 PM' with a battery level of '83%'. Below the status bar, the browser tabs are labeled '1 CR', 'Draft Charge', and '05A'. The main content area shows a legal document titled 'Tex. Admin. Code tit. 22, § 75.17'. The document text includes:

or

(D) other examination and evaluation services that are inconsistent with the practice of chiropractic and with the examination and evaluation services described under this subsection.

(d) Analysis, Diagnosis, and Other Opinions.

(1) In the practice of chiropractic, licensees may render an analysis, diagnosis, or other opinion regarding the findings of examinations and evaluations. Such opinions could include, but are not limited to, the following:

(A) An analysis, diagnosis or other opinion regarding the biomechanical condition of the spine or musculoskeletal system including, but not limited to, the following:

- (i) the health and integrity of the structures of the system;
- (ii) the coordination, balance, efficiency, strength, conditioning and functional health and integrity of the system;
- (iii) the existence of structural patho-

other abnormality of the system; and

(vi) the effect of said structural pathology, functional pathology or other abnormality of the system on the health of an individual patient or population of patients;

(B) An analysis, diagnosis or other opinion regarding a subluxation complex of the spine or musculoskeletal system including, but not limited to, the following:

- (i) the nature, severity, complicating factors and effects of said subluxation complex;
- (ii) the etiology of said subluxation complex; and
- (iii) the effect of said subluxation complex on the health of an individual patient or population of patients;

(C) An opinion regarding the treatment procedures that are indicated in the therapeutic care of a patient or condition;

(D) An opinion regarding the likelihood of recovery of a patient or condition under an

On the left side, there is a 'Table of Contents' sidebar with the following items:

- TABLE OF CONTENTS (2)
- INDEX OF AUTHORITIES (2)
- STATEMENT OF JURISDICTION (7)
- ISSUES PRESENTED (9)
- STATEMENT OF FACTS (10)
- SUMMARY OF THE ARGUMENT (15)
- ARGUMENT (18)
- PRAYER (48)

On the right side, there is a vertical toolbar with various annotation tools including a pencil, eraser, highlighter, and a 'Back Button' which is highlighted with a blue arrow pointing to the left.

# Note Taking Apps

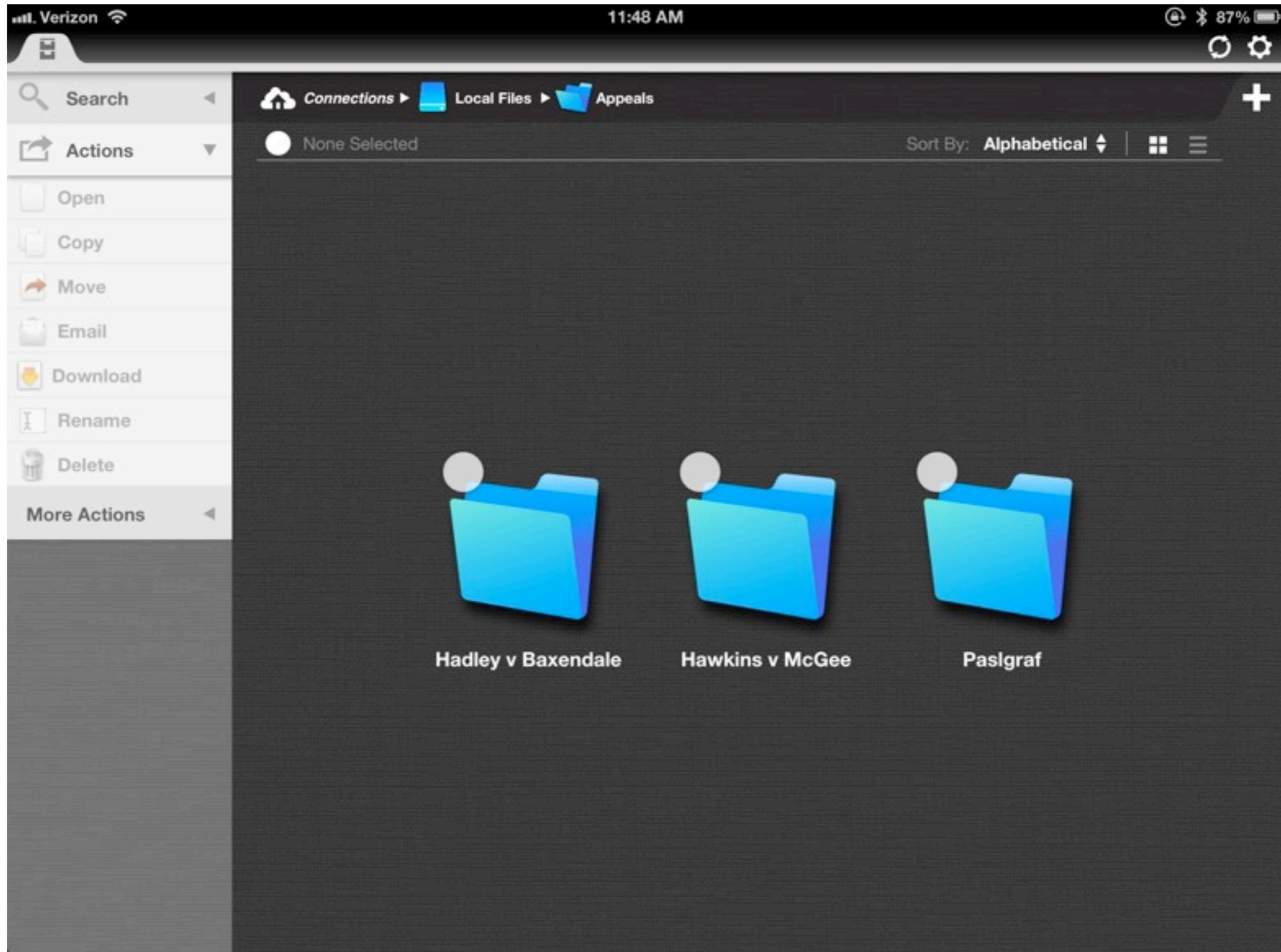


iAnnotate PDF



NotesPlus

# iAnnotate PDF



# iAnnotate PDF

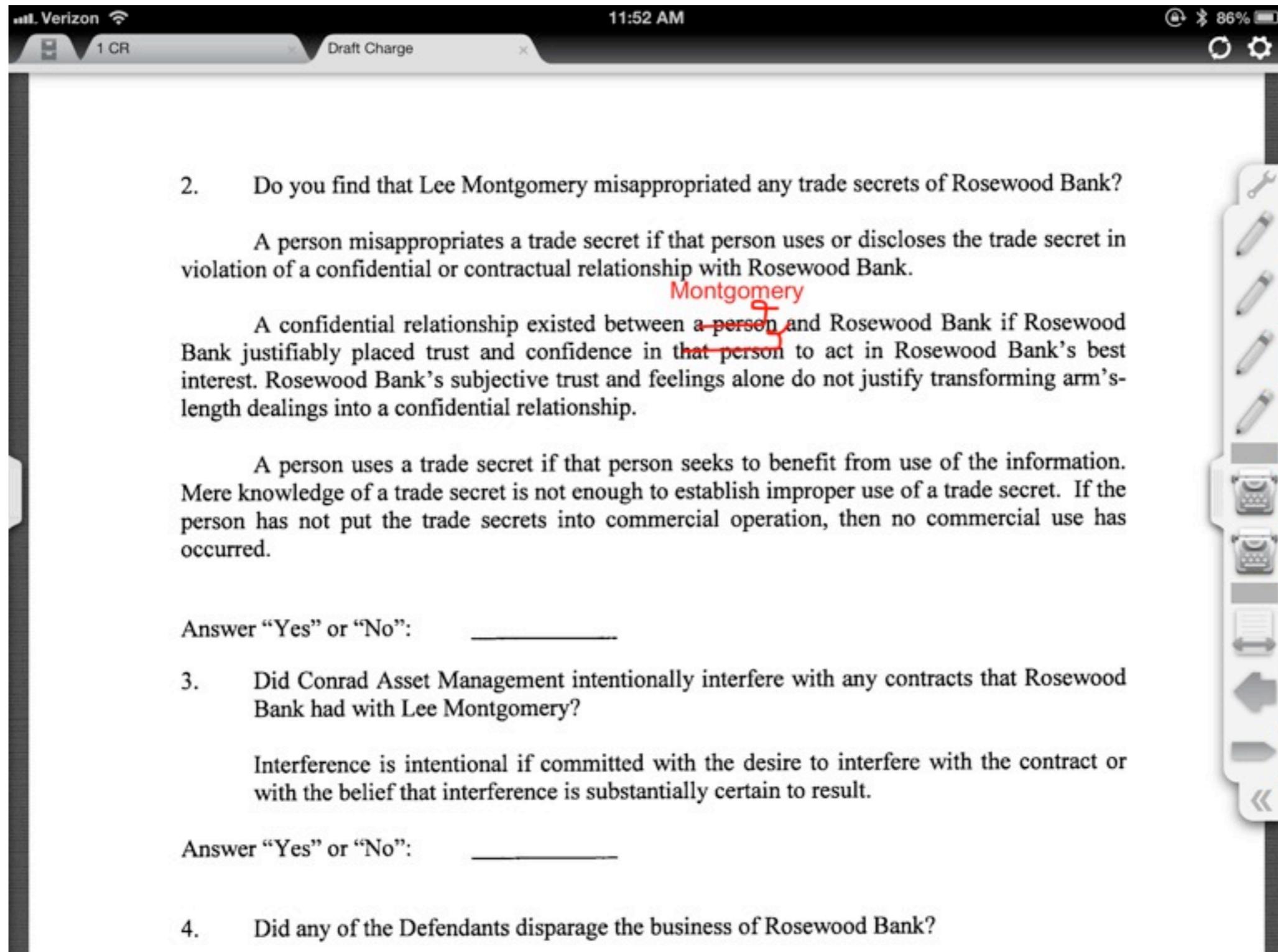
The screenshot displays the iAnnotate PDF application interface. At the top, the status bar shows 'Verizon', signal strength, Wi-Fi, the time '11:51 AM', and battery level '86%'. Below the status bar, there is a browser-like header with '1 CR' and navigation icons. The main content area shows a table of contents for a legal document. On the left, a sidebar contains 'Outline', 'Bookmarks', and a list of document pages with their respective page numbers. On the right, a vertical toolbar contains various annotation tools like a pencil, eraser, highlighter, and selection tools.

Section	Page Number
PLAINTIFFS' VERIFIED ORIGINAL PETITION FOR DECLARATORY JUDGMENT AND APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION WITH EXHIBITS ATTACHED FILED OCTOBER 22, 2012.....	5
EXHIBIT A.....	28
EXHIBIT B.....	46
EXHIBIT C.....	67
EXHIBIT D.....	68
EXHIBIT E.....	69
CITY OF HOUSTON AND DANIEL W. KRUEGER'S ANSWERTO PLAINTIFF'S ORIGINAL PETITION FILED NOVEMBER 16, 2012.....	70
PLAINTIFF S' VERIFIED FIRST AMENDED ORIGINAL PETITION FOR DECLARATORY JUDGMENT AND APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION WITH EXHIBITS ATTACHED FILED DECEMBER 19, 2012.....	74
EXHIBIT A.....	101
EXHIBIT B.....	119
EXHIBIT C.....	140
EXHIBIT D.....	141
EXHIBIT E.....	142
DEFENDANTS' PLEA TO THE JURISDICTION WITH APPENDIX'S ATTACHED FILED JANUARY 18, 2013.....	143
APPENDIX A.....	165
APPENDIX B.....	174
APPENDIX C.....	184
APPENDIX D.....	186
APPENDIX E.....	188
PROPOSED ORDER.....	192
DEFENDANTS' MOTION FOR PROTECTIVE ORDER WITH EXHIBIT ATTACHED FILED JANUARY 18, 2013.....	118
EXHIBIT A.....	200
PLAINTIFFS' RESPONSE TO DEFENDANTS' PLEA TO THE JURISDICTION FILED FEBRUARY 22, 2013.....	225

**Outline**

- 1262909 Cover Page 1
- 1262909 Index Pages 2
- 001\_M\_20121022\_PLAINTIFFS VERIFIED ORIGI... 5
- 001\_S\_20121022\_E XHIBIT A\_53719535 28
- 001\_S\_20121022\_E XHIBIT B\_53719536 46
- 001\_S\_20121022\_E XHIBIT C\_53719538 67
- 001\_S\_20121022\_E XHIBIT D\_53719539 68

# iAnnotate PDF



The screenshot shows the iAnnotate PDF application interface. At the top, the status bar displays "Verizon", signal strength, Wi-Fi, and battery at 86%. The browser tabs show "1 CR" and "Draft Charge". The document content includes:

2. Do you find that Lee Montgomery misappropriated any trade secrets of Rosewood Bank?

A person misappropriates a trade secret if that person uses or discloses the trade secret in violation of a confidential or contractual relationship with Rosewood Bank.

A confidential relationship existed between ~~a person~~ <sup>Montgomery</sup> and Rosewood Bank if Rosewood Bank justifiably placed trust and confidence in ~~that person~~ to act in Rosewood Bank's best interest. Rosewood Bank's subjective trust and feelings alone do not justify transforming arm's-length dealings into a confidential relationship.

A person uses a trade secret if that person seeks to benefit from use of the information. Mere knowledge of a trade secret is not enough to establish improper use of a trade secret. If the person has not put the trade secrets into commercial operation, then no commercial use has occurred.

Answer "Yes" or "No": \_\_\_\_\_

3. Did Conrad Asset Management intentionally interfere with any contracts that Rosewood Bank had with Lee Montgomery?

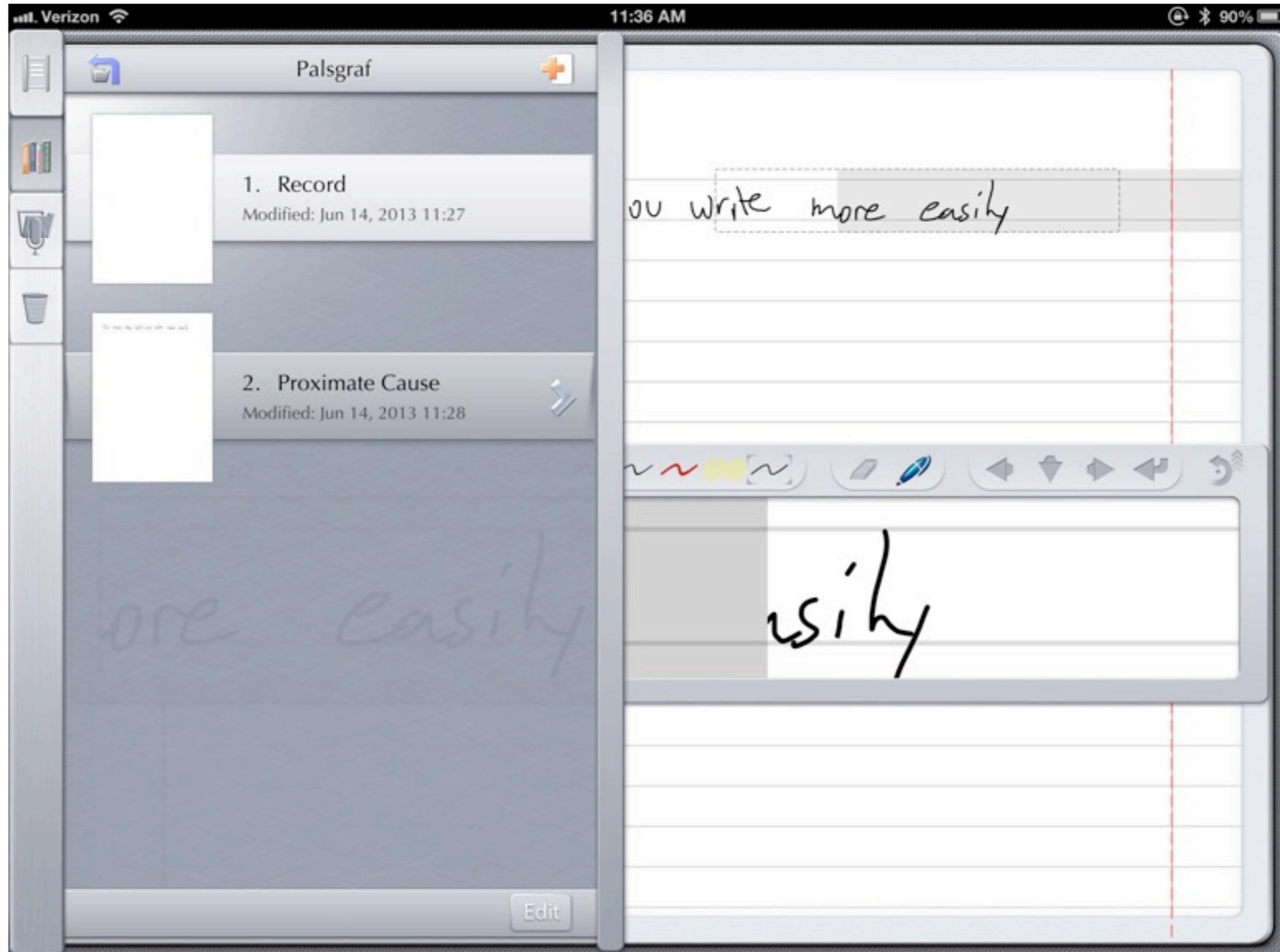
Interference is intentional if committed with the desire to interfere with the contract or with the belief that interference is substantially certain to result.

Answer "Yes" or "No": \_\_\_\_\_

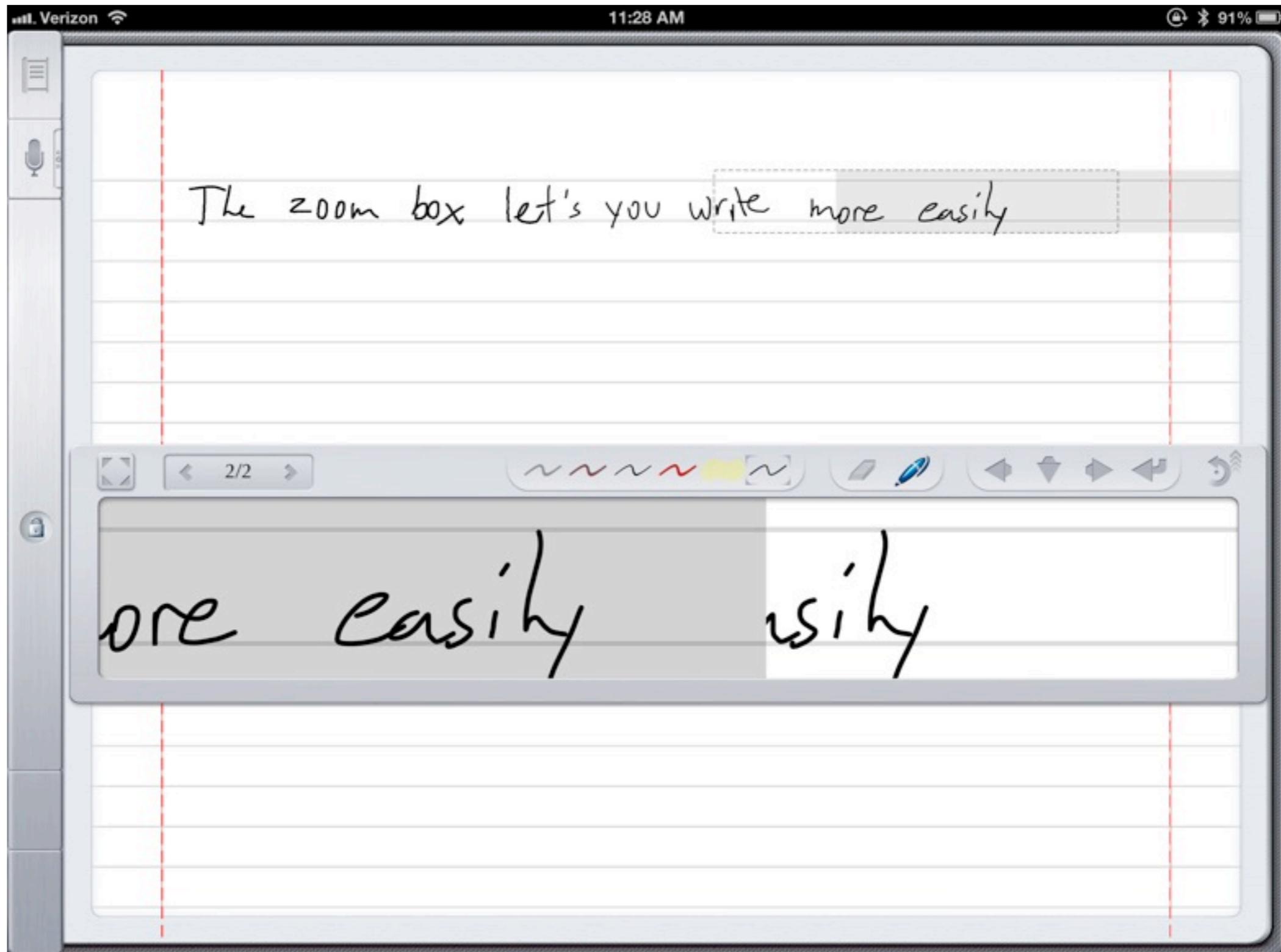
4. Did any of the Defendants disparage the business of Rosewood Bank?

The interface includes a vertical toolbar on the right with various annotation tools like highlighter, eraser, and text tool.

# NotesPlus



# NotesPlus



# Law-Related Apps



Rulebook



Westlaw

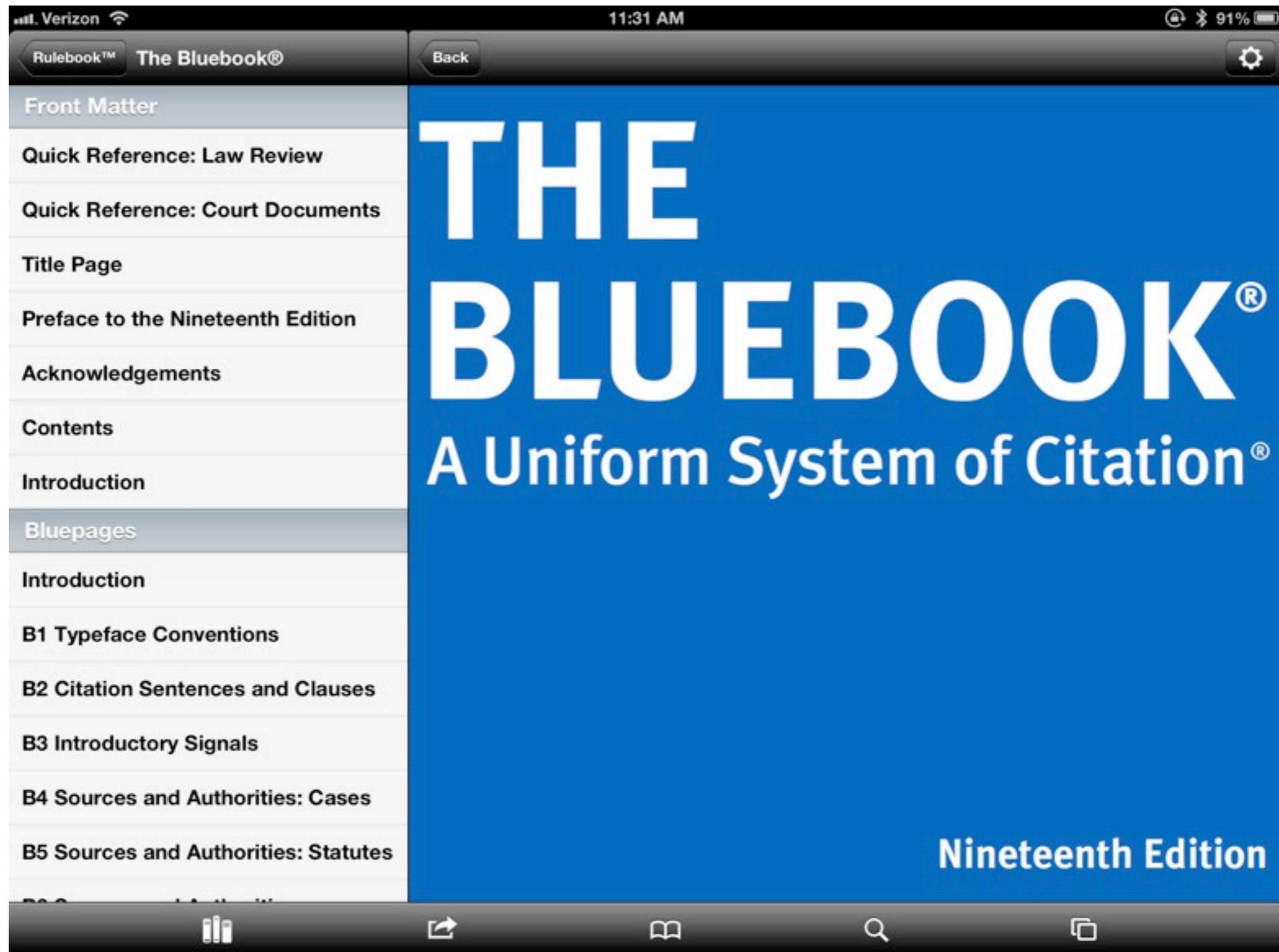


Lexis



FastCase

# Rulebook



# Rulebook

Verizon 11:32 AM 91%

Back T6 Case Names and Institutio... Case Names and Institutional Authors in Citations

**Case Names and Institutional**

The Bluebook®, A Uniform System of Citation®  
Tables  
T6 Case Names and Institutional Authors in Citations  
**Case Names and Institutional Authors in Citations**

Abbreviate case names in citations by abbreviating any word listed below (rule 10.2.2). It is permissible to abbreviate other words of eight letters or more if *substantial* space is thereby saved and the result is unambiguous in context. (Thus, it would be permissible to abbreviate "Encyclopaedia Britannica" to "Encyc. Britannica," "Attorney" to "Att'y," or "Petroleum" to "Petrol.") Unless otherwise indicated, plurals are formed by adding the letter "s."

▶ Academy	Acad.	▶ Investment	Inv.
▶ Administrat[ive, ion]	Admin.	▶ Laboratory	Lab.
▶ Administrat[or, rix]	Adm'[r, x]	▶ Liability	Liab.
▶ Advertising	Adver.	▶ Limited	Ltd.
▶ Agricultur[e, al]	Agric.	▶ Litigation	Litig.
▶ Alternative	Alt.	▶ Machine[ry]	Mach.
▶ America[n]	Am.	▶ Maintenance	Maint.
▶ and	&	▶ Management	Mgmt.
▶ Associate	Assoc.	▶ Manufacturer	Mfr.
▶ Association	Ass'n	▶ Manufacturing	Mfg.
▶ Atlantic	Atl.	▶ Maritime	Mar.
▶ Authority	Auth.	▶ Market	Mkt.
▶ Automo[bile, tive]	Auto.	▶ Marketing	Mktg.
▶ Avenue	Ave.	▶ Mechanic[al]	Mech.
▶ Bankruptcy	Bankr.	▶ Medic[al, ine]	Med.
▶ Board	Bd.	▶ Memorial	Mem'l
▶ Broadcast[ing]	Broad.	▶ Merchant[ile, disc, discol]	Merch

Home Share Bookmarks Search Copy

# WestlawNext



# WestlawNext

The screenshot displays the WestlawNext mobile application interface. At the top, the status bar shows "Verizon" service, a Wi-Fi signal, the time "11:41 AM", and a battery level of "89%". Below the status bar is a dark blue header with a "My Research" button on the left, the text "Richard's Research" in the center, and "Sort" and "Tools" buttons on the right.

The main content area is a list of research items. The first five items are folders, each represented by a yellow folder icon and a right-pointing chevron:

- 5th Circuit Standards of Review
- BK Direct Appeals (158(d))
- Error Preservation
- Full Faith and Credit
- Summaries of Expert Opinions - 1006

The next four items are individual cases, each represented by a document icon, a yellow flag icon, the case name, the citation, and the word "Cases" on the right:

- Arkoma Basin Exploration Co., Inc. v. FMF Associates 1990-A, Ltd.**  
Tex. | January 25, 2008 | 249 S.W.3d 380
- Bank Melli Iran v. Pahlavi**  
C.A.9 (Cal.) | June 29, 1995 | 58 F.3d 1406
- Bridgeway Corp. v. Citibank**  
C.A.2 (N.Y.) | January 03, 2000 | 201 F.3d 134
- E-Systems, Inc. v. Islamic Republic of Iran**  
N.D. Tex. | June 19, 1980 | 491 F.Supp. 1294

At the bottom of the screen is a dark grey navigation bar with the WestlawNext logo on the left and five icons: Home (house), Results (list), History (clock), Folders (folder), and Offline (download arrow).

# WestlawNext

The screenshot shows the WestlawNext mobile application interface. At the top, the status bar displays 'Verizon', signal strength, Wi-Fi, the time '11:41 AM', and battery level '88%'. Below the status bar is a navigation bar with a 'Back' button, a search bar containing 'Search West Key Number System', and a dropdown menu set to 'All Federal'. Underneath is a header for 'West Key Number System' with a star icon. The main content area features two radio buttons: 'Search all content' (selected) and 'Specify content to search'. A list of legal topics is displayed, each with a 'Scope' link to its right. The topics are: 1 ABANDONED AND LOST PROPERTY, 2 ABATEMENT AND REVIVAL, 4 ABORTION AND BIRTH CONTROL, 5 ABSENTEES, 6 ABSTRACTS OF TITLE, 7 ACCESSION, 8 ACCORD AND SATISFACTION, 9 ACCOUNT, 10 ACCOUNT, ACTION ON, 11 ACCOUNT STATED, 11A ACCOUNTANTS, 12 ACKNOWLEDGMENT, 13 ACTION, 14 ACTION ON THE CASE, 15 ADJOINING LANDOWNERS, 15A ADMINISTRATIVE LAW AND PROCEDURE, and 16 ADMIRALTY. At the bottom is a dark navigation bar with the 'WestlawNext' logo and icons for Home, Results, History, Folders, and Offline.

Verizon 11:41 AM 88%

Back Search West Key Number System All Federal

West Key Number System

Search all content  Specify content to search

1 ABANDONED AND LOST PROPERTY	Scope
2 ABATEMENT AND REVIVAL	Scope
4 ABORTION AND BIRTH CONTROL	Scope
5 ABSENTEES	Scope
6 ABSTRACTS OF TITLE	Scope
7 ACCESSION	Scope
8 ACCORD AND SATISFACTION	Scope
9 ACCOUNT	Scope
10 ACCOUNT, ACTION ON	Scope
11 ACCOUNT STATED	Scope
11A ACCOUNTANTS	Scope
12 ACKNOWLEDGMENT	Scope
13 ACTION	Scope
14 ACTION ON THE CASE	Scope
15 ADJOINING LANDOWNERS	Scope
15A ADMINISTRATIVE LAW AND PROCEDURE	Scope
16 ADMIRALTY	Scope

WestlawNext Home Results History Folders Offline

The iPad as  
Part of the  
Writing Process

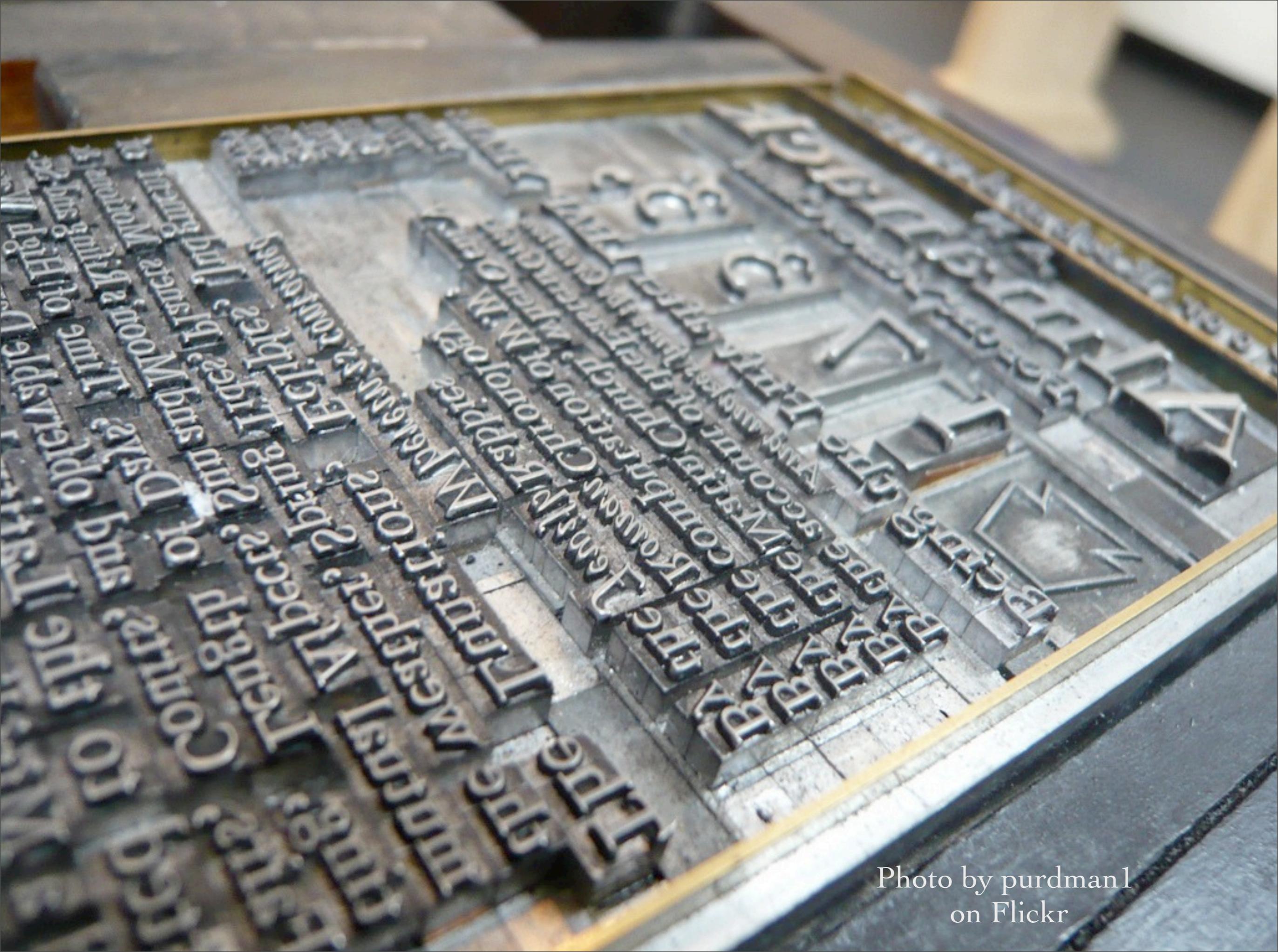
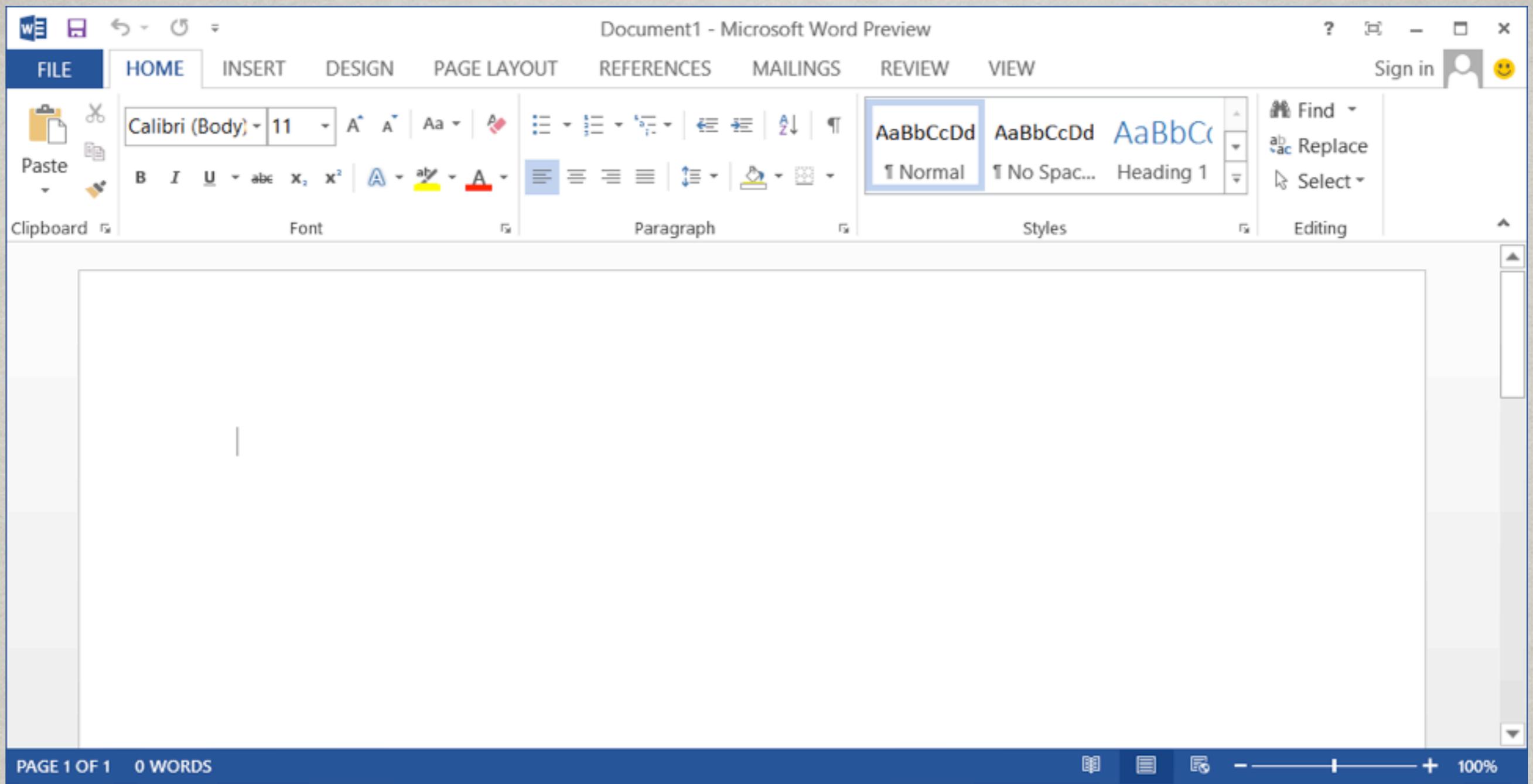


Photo by purdman1  
on Flickr



Microsoft Word



# **MADMAN, ARCHITECT, CARPENTER, JUDGE: ROLES AND THE WRITING PROCESS**

**by Betty S. Flowers**

Professor of English and  
Director of the Lyndon B. Johnson Presidential Library



"What's the hardest part of writing?"  
I ask on the first day of class.

"Getting started," someone offers,  
groaning.

"No, it's not getting started," a voice  
in the back of the room corrects. "It's  
keeping on once you do get started. I can always write a  
sentence or two-but then I get stuck."

"Why?" I ask.

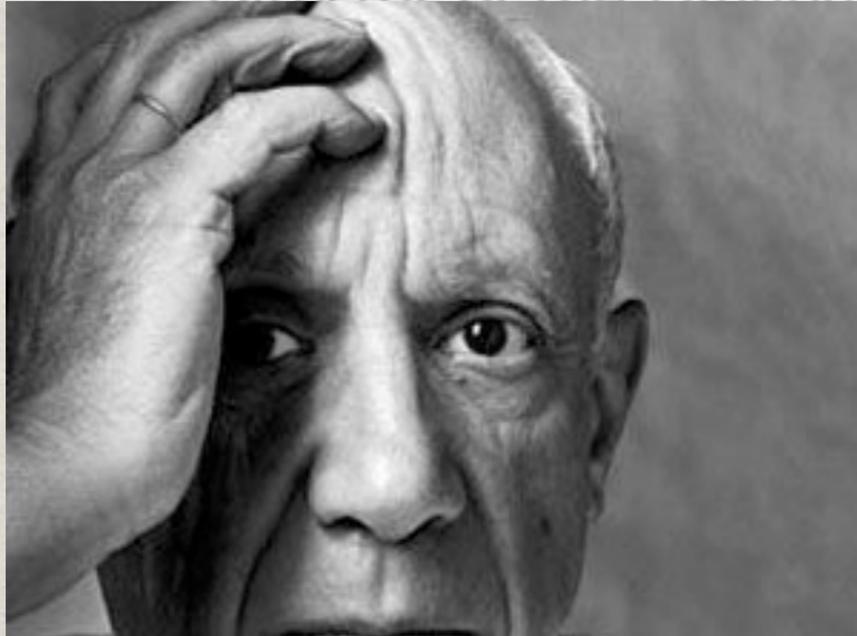
"I don't know. I am writing along, and all of a sudden I  
realize how awful it is, and I tear it up. Then I start over  
again, and after two sentences, the same thing  
happens."

"Let me suggest something which might help," I say.  
Turning to the board, I write four words: "madman,"  
"architect," "carpenter," "judge."

# MADMAN, ARCHITECT, CARPENTER, JUDGE: ROLES AND THE WRITING PROCESS

by Betty S. Flowers

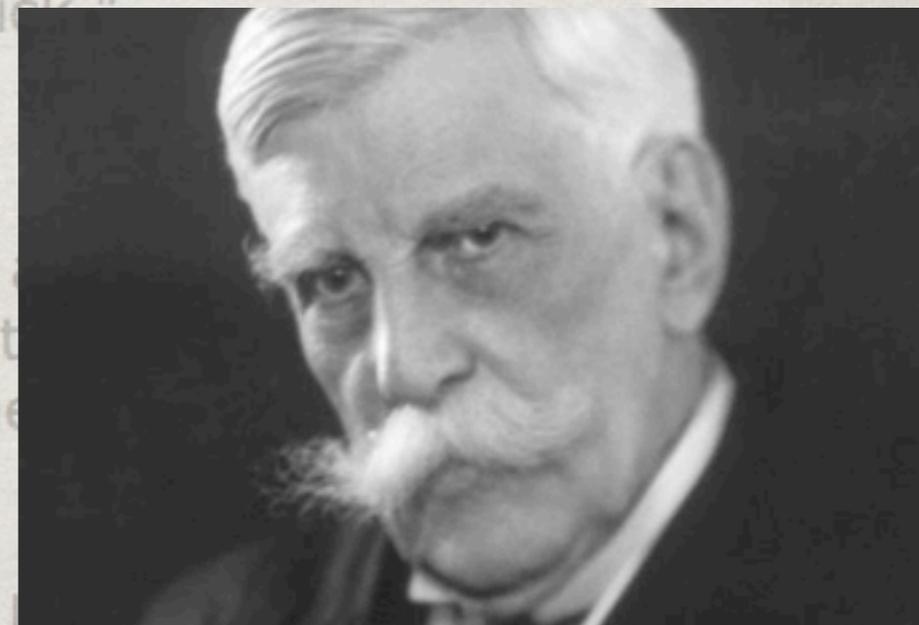
Madman



Architect



Carpenter



Judge

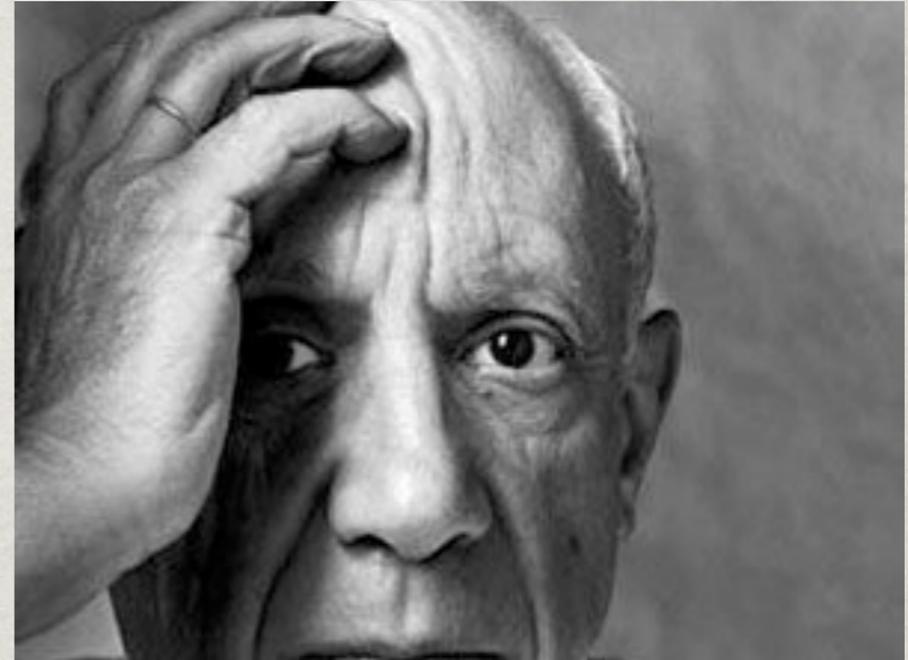
"Let me suggest something which  
Turning to the board, I write four words: "madman."  
"architect," "carpenter," "judge."

# Where is the iPad strong?

## Gathering Ideas

Mind-mapping apps

Note-taking apps



## Structuring Thoughts

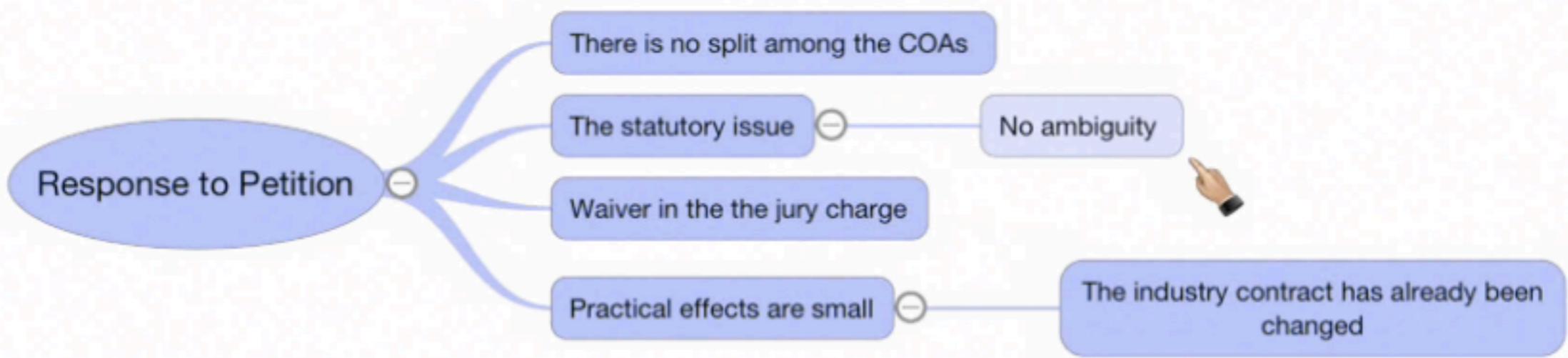
Outlining apps

Simple text editors



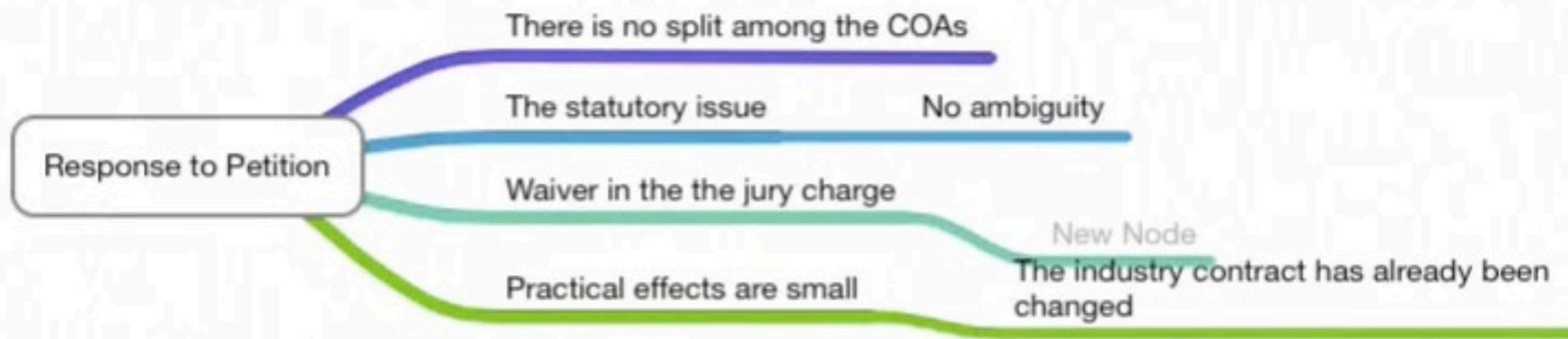
# iThoughts HD





# MindNode





Our simple example doesn't really show off the benefits of MindNode



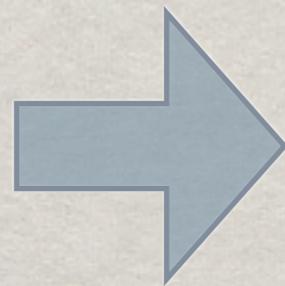
As a larger example, here's the map I used when first thinking about this panel

# Exporting from MindNode



Cancel Export Types

-  **MindNode Document** >
-  **FreeMind Document** >
-  **PNG Image** >
-  **Text Outline** >
-  **OPML Outline** >
-  **PDF Document** >



# OmniOutliner for iPad



# Rearranging Headings in OmniOutliner

## Topic

### Response to Petition

There is no split among the COAs  
Reasons to deny review

Reasons to deny review

### Waiver in the the jury charge

No instruction was offered

The trial court never ruled on this contract language

### Practical effects are small

The industry contract has already been changed

### The statutory issue



# You have an OPML file. Now what?

Could use the iPad  
as a “second screen”  
to consult while  
you’re typing into a  
full computer.

Or find a tool that  
can transform  
OPML into a file  
format you need

makeDoc





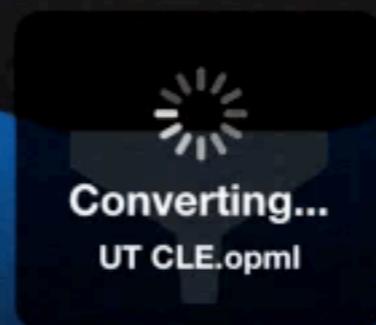
Export as OPML



Export as Markdown



DOCX for use in Word  
(or importing to WordPerfect)



Done

UT CLE.docx



# UT CLE

---

## **Response to Petition**

Reasons to deny review

**There is no split among the COAs**

**Waiver in the the jury charge**

*No instruction was offered*

*The trial court never ruled on this contract language*

**Practical effects are small**

*The industry contract has already been changed*

The statutory issue

**No ambiguity**

**The contract language does not require both parties to purchase insurance**

This is  
how the  
default Word  
styles look

Heading 3 Times New... 1... B I U

Home Layout Document Elements Tables Charts SmartArt Review

## **ARGUMENT**

### **I. REASONS TO DENY REVIEW**

**A. There is no split among the COAs**

**B. Waiver in the jury charge**

**1 No instruction was offered**

**2 The trial court never ruled on this contract language**

**C. Practical effects are small**

**1 The industry contract has already been changed**

### **II. THE STATUTORY ISSUE**

**A. No ambiguity**

### **III. THE CONTRACT LANGUAGE DOES NOT REQUIRE BOTH PARTIES TO**

But if you've adapted the default Word styles to a legal format, you might get this