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The other half of virtuosity in legal writing

Could your choice of typeface be the difference between a winning and losing brief?

Several issues ago I imparted some of my favorite grammar-and-usage tips in a piece called “A Short Reckoning of Good Legal Writing.” That article suggested that our legal writing should demonstrate virtuosity from the very first word because we write for a tough and time-strapped crowd.

This companion piece posits that sound writing style and good mechanics compose only half the picture of virtuosity. The other half is how your writing actually looks. If your printed page comes across as unpolished, then you and your law firm do too. You wouldn’t show up to court unkempt, so why would you submit a lowbrow-looking brief?

Below are ten tips I learned from my pre-lawyer years working in the publishing and graphic-design industries. A common goal runs through them all: optimal readability of your shining prose.

Typeface: win credibility and believability

People who design ads, flyers, documents or books for a living have access to innumerable fonts. I myself own several thousand. Do I use them all? No. Should I? Probably not. Should I know which one works best for a given purpose? Yes. And so should you.

For lawyers, the golden rule is to comply with applicable court rules when drafting court documents. But the rules are not as rigid as you might think. For example, the local rules for the Central District place no restrictions on choice of typeface. Our state and the federal rules of appellate procedure require merely a “roman style” typeface. And the California Rules of Court mandate that the “typeface must be *essentially equivalent* to Courier, Times New Roman, or Arial.” These rules allow considerable leeway in choosing a typeface.

Type can be broken down into dozens of categories, but a lawyer can get by with two: serif and *sans* serif. Serif typefaces have little tails, or serifs, on the characters. Times is the best-known, and most banal, example. *Sans* serif typefaces – you guessed it – are devoid of serifs. Arial is the best and most uninspiring example.

Most typographers believe that serifs foster visual flow from character to character and thereby enhance readability, especially of running text. Conversely, the absence of serifs makes typefaces more suitable for short headlines or signage. (Think of how wrong a stop sign would look in a serif font like Times.)

An experiment by the New York Times last year showed that typeface directly affects credibility and believability. By presenting the same data in different typefaces and then quizzing readers

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on their confidence in the content, the experiment demonstrated that even slight variations in typeface can make a big difference. The winner, Baskerville (the typeface used in this magazine), elicited much more confidence than second place, Georgia, even though these serif typefaces are very similar. Few of those surveyed felt much confidence in the version presented in Comic Sans, which is a novelty typeface. For litigators, who at all times should be looking to win the battle for credibility and believability, this should be sounding bells. Your choice of typeface just might be the difference between winning and losing a motion.

Type size: bigger is not better

Type size is easy for lawyers: 12 points for state court, 13 or 14 points for federal. Right? Not so fast. The court rules require these numbers, but not all fonts are created equal size-wise.

For instance, 12-point Times actually equals 10.75-point Arial. And 13-point Baskerville yields text the same size as 12-point Janson. So what the rules mean by “12 points” is not entirely clear. I believe that the rule-writers oriented themselves on Times. So to achieve the actual size of 12-point Times in another typeface, you might need a different point size. And when writing something to which the rules don’t apply, you remain free to use any size at all.

Half sizes? Yes, type sizes are not limited to round integers. With powerful design software, you can set type to the hundred-thousandth decimal. Word processors are more limited. But most permit half sizes. For letters and memos, I set my *sans* serif typeface at 11.5 points.

Why use 11.5 instead of 12? Because unlike in other areas of life, bigger is not better. The text you read in books, magazines and newspapers is set between 9 and 11 points (this magazine is 9 points). This is not to cram more words on the page and save paper. It’s because these are optimal sizes for readability of running text. Most typographers consider 12 points an inelegant size reminiscent of college term papers. You may think, especially as you get older, that you

would love to read a book set in really big type. Go to a children’s bookstore and see if that’s true.

Line length: keep it short

The length of a line of text, called its measure, directly affects readability. Our eyes like to read text – and our brains are accustomed to processing it – in short measures. Again, consider commercial magazines and newspapers. The text does not run continuously from the left edge of the page to the right, but rather is broken into columns. That’s because the eye has a hard time coming back to the left edge after traveling too far to the right. And that’s why we prefer to write on – and read – a vertical page rather than a horizontal one.

Court rules prescribe minimum margin size. For example, the California Rules of Court require “at least” a 1-inch left margin and a 1/2-inch right margin. Abiding by these minimum standards produces a line measure that is too long. Enhance readability by increasing the margins, thereby decreasing the length of your line. Won’t that impact the page count? Yes, it will. You will have to use fewer words to make your arguments. But virtuoso legal writers generally finish with a few pages to spare.

Line spacing: get it right

Court rules fix the parameters of line spacing (called *leading*; pronounced “ledding”), so there’s not a lot of leeway. But there are a few things you should know.

First, the California Rules of Court allow for double spacing *or* one-and-one-half line spacing. So if you can’t live with the loss of real estate that results from shortening your line length, you can choose one-and-one-half line spacing and regain ground.

Second, your word processor probably is not producing true line spacing. Double spacing means leading that is twice as large as the type’s point size. So 12-point type goes with 24-point leading. But the automatic “double spacing” option in Microsoft Word, for example, inserts extra line space. The cure is to use the “exact” option and manually set

the leading based on your type size.

Neither double nor one-and-one-half line spacing is optimal. So when court rules don’t apply, use professional leading. This involves using true single-spacing and adding about 2 points. So for 11-point type, your ideal line spacing would be 13 points. Typographers think of space as composers think of time and would note this arrangement as 11/13 (this magazine is normally set 9/10.5, but we have been known to cheat and set it 9/9.5 when we have too many words for the allocated space – *editor*).

A word about spacing between paragraphs. Briefs should have no additional spacing because you indent to signal a new paragraph. But with letters, where you are not indenting, set paragraphs apart by adding extra space. The problem arises here too when you rely on automatic values in your word processor. When you hit a double return, you get too much line spacing. Solve this by manually setting the space after (or before) paragraphs and forgoing the double return. About 6 – 8 points between paragraphs looks right.

Text alignment: run ragged

Typewriters produce left-aligned text, characterized by paragraphs with a “ragged” right edge. Modern word processors can render left, center, right and justified text alignment. Justified text blocks have perfectly even left and right edges. When we all got our first word processors many years ago, the first thing we did was to start justifying our text because we had the power to emulate professional typography. Or so we thought.

Justified text is not necessarily a mark of professionalism. Because justification requires forcing space between words and characters, it disrupts the inherent letter-spacing of your typeface and can make lines of text look queer. Yes, most books published in the western world use justified text. But they are designed with sophisticated software that justifies text using advanced algorithms which can be further adjusted by designers. Your word processor yields only rudimentary text

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justification. The result is that your printed page doesn't look professional; it looks like it's trying to look professional.

Note that most newspapers, magazines and artistic books use left-alignment. Follow their lead. Maintain the integrity of your font's inherent letter-spacing by choosing left-aligned text and embracing the ragged right edge.

Type style – bold, underline, italics: obey the rules

Here are the rules. Don't fight them:

- Never underline. Ever.
- Use bold judiciously. Perhaps for headings or subheadings. Never for emphasis.
- Use italics for emphasis.
- Never use bold and italics at the same time (unless you are bolding a case name in a heading, for example).
- Whenever you find yourself italicizing a word for emphasis, consider rewriting the sentence. Strong syntax generally packs a stronger punch than an italicized word.

All caps? Not if you can help it

Setting a sentence in all caps is a sure-fire way to make it as unreadable as possible. The ascenders and descenders of characters (i.e., the lower-case extensions of characters above the mean line of text and below the baseline) allow us to recognize words. Setting type in all caps hinders this process. So whenever possible, avoid using all caps. Two sentences in a row should never appear in all caps.

And I hope it goes without saying that you should never use all caps

(and extra punctuation) for emphasis. (NEVER!!)

Also, for your headlines and subheads, eschew traditional title case in favor of sentence case. So instead of "The Statute of Limitations Has Not Run," write "The statute of limitations has not run."

Space between sentences: just do it

One, not two. It's been the rule for nearly a century. I defy you to find a single piece of professionally typeset material that uses two spaces between sentences. Pick up any book, magazine or newspaper and see for yourself. Why lawyers perpetuate this typographic quirk, left over from 19th century manuscripts and 1950s typewriters, is a mystery. It serves no purpose other than to compromise readability and demonstrate diletantism.

Headings and subheads: vary wisely

Align them left, not center. (In fact, try to eliminate center-aligned text altogether.) For a document with many levels of subheadings, you'll need a variety of styles. A good professional font family will help, as it will contain varying weights (semi-bold, bold) and a set of small caps. Headings should rest directly on top of the text they introduce: do not insert extra line spacing. And of course, no underlining.

Miscellaneous: take advantage of type

Use your font's real quotation marks

(called curly quotes), not the straight quotation marks that word processors can default to. There is a setting for this in your word processor. If you paste text into your document from the Web, you will have to manually change the straight quotes to curly.

If you write with em dashes (—), be sure to insert no space on either side; the dash touches the words on either side of it. The modern trend is to use an en dash with one space (–) on each side of it instead of an em dash. Also use en dashes, not hyphens, for continuing numbers, such as 5-7, with no space on either side of the dash.

Your font has its own ellipses. Learn the keystroke for it and use it rather than cobbling an ellipsis from periods and spaces.

Refrain from putting fractions and ordinals in superscript. If your word processor automatically puts ordinals in superscript, change the settings. It should be like so: Cal.App.4th, not Cal. App. 4th. And no spaces between Cal. and App. and 4th. These particular details are not just good typography, they're firm Bluebook rules [Ed. note: Advocate Magazine uses the California Style Manual].

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