

The Scrivener: Modern Legal Writing



The Blackletter Law¹ of Form

by K.K. DuVivier

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Substance, rather than form, should be the first concern of any lawyer drafting a brief. However, just as writing style can have an impact on the image we project, so can the overall impression we make be significantly impacted by the format of our brief.

The Committee on Rules of Practice and Procedure of the Judicial Conference of the United States has revised the federal rules of procedure to make them more understandable and user-friendly. The revised rules became effective December 1, 1998.² This article focuses primarily on the new requirements of Federal Appellate Rule 32, aimed at improving the readability of briefs.³

Typeface and Readability

Although many forms of type may be legible, or clearly defined, they may not be readable. Readability describes ease of reading, specifically how some typefaces are suitable for long texts meant for continuous reading.⁴ People read text in groups of words at a time. Shapes made by the letters on a page enable the readers to recognize more easily groups of letters as words and thus to interpret the meaning of a text. If the print is too close together, it becomes too black and dense for easy reading.

The objective is to draw the eye to the next character in a word, but not to draw the words together or to draw the eye to the next line down. Most printed materials—newspapers, books, and professionally printed briefs—are printed in proportionally spaced, serif type for best readability.

Q: *What is proportionally spaced type?*

A: This paragraph is in Courier, a commonly used monospaced type that allots the same amount of space for every letter. Typewriters produce

monospaced or equally spaced words. Pica typewriters produce ten characters per inch (10 cpi), and elite typewriters produce 12 cpi.

This paragraph is in Times New Roman, a proportionally spaced type designed in 1931 for *The Times* newspaper in London. Proportionally spaced type varies the horizontal space for characters depending upon the width of the character, so that a capital "M" is given more space than a lower case "i." Most word processors have the capability to form proportionally spaced type.

Q: *The new federal rules provide that the proportionally spaced typeface must include serifs, but that sans-serif type may be used in headings and captions.⁵ What are serifs?*

A: This paragraph is again in Times New Roman, which is a serif type. Serifs are the short lines that extend from the upper and lower ends of letters. The serifs emulate strokes of written words and help reinforce a group of letters as a word. They also help draw the eye horizontally to the next word instead of allowing it to wander to the line above or below.

This paragraph is in san-serif type. San-serif typefaces do not have additional marks at the ends of letters. San-serif type may require wider spacing to be more readable.

Q: *The new federal rules require that proportionally spaced type must be 14 point or larger.⁶ What does 14 point mean?*

A: Typesize is measured in points. There are approximately 72 points to an inch. This paragraph is in 14-point type. The larger the point size, the larger the typeface.

Emphasis and Readability

Variants add emphasis to parts of the text. Some of the most common methods of emphasizing a word or phrase are the following: (1) **bold**; (2) *italics*; (3) underlining; or (4) ALL CAPS. Be careful, however, because some methods of emphasizing words actually diminish readability.

DO YOU HAVE QUESTIONS ABOUT LEGAL WRITING?

K.K. DuVivier will be happy to address them through *The Scrivener* column. Send your questions to: K.K. DuVivier, University of Colorado School of Law, Campus Box 401, Boulder, CO 80309-0401 or through e-mail to: duvivier@spot.colorado.edu.

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Bold: The federal rules mention only the use of bold or italics for emphasis,⁷ suggesting that other forms of emphasis are discouraged. Bold, or boldface, is effective for emphasis, but it can affect readability because it is distracting.

Italics: Italics emulate handwriting and can be effective for emphasis if they are not too subtle. The advantage over boldface, underlining, or all caps is that italics are more readable. The federal rules require that either italics or underlining be used for case names.⁸

Underlining: Both the federal rules and *Bluebook* Rule P.1 permit writers to signal case names either by italic or underlining. However, some experts consider underlining "an ugly hangover from mechanical typewriters."⁹ Consequently, italics seem to be the preferred method of representing case names. Underlining is not recommended for emphasis because it over-emphasizes the horizontal line of the type and distracts from the words as groups.

ALL CAPS: HAVE YOU EVER WONDERED WHY MORE TYPOS SEEM TO APPEAR IN HEADINGS PRINTED IN ALL CAPITALS, OR ALL CAPS? LINES OF ALL CAPS ARE HARDER TO PROOF BECAUSE THEY ARE HARDER TO READ. THE CAPS PROVIDE LESS WHITE SPACE AND DISGUISE THE WORD SHAPES.¹⁰ THE PRELIMINARY DRAFT OF REVISED RULE 32(6) STATED THAT ALL CAPS COULD BE USED "ONLY FOR CAPTIONS AND SECTION NAMES."¹¹ HOWEVER, THE FINAL VERSION OF THE RULE DOES NOT MENTION ALL CAPS,¹² AND THIS MAY INDICATE THEY SHOULD BE AVOIDED ENTIRELY.

Overuse of emphasis is irritating and counterproductive. Furthermore, emphatic points become doubly irritating if there is too much variation in the style of emphasis. Decide which variant you are going to use, then use it consistently throughout.

Conclusion

Although we would like to believe that appearances do not matter, in fact, they do. Sloppy dress or an uncertain demeanor in court can make an unconscious statement. They can be in-

terpreted as displaying a lack of professionalism or sincerity, thus undermining our otherwise sincere efforts to argue the law. Similarly, we should pay some attention to the form of our briefs. While the content is still our emphasis, we should not permit the form to undermine our substance.

NOTES

1. "Blackletter" is also known as "Gothic" or "Old English" typeface. It originated in Germany around 1600. The curls and swirls of the letters were derived from manuscript writing. Smith and Ten Holt, *The Designer's Handbook* 8-9 (London: New Burlington Books, 1994). The expression "blackletter law," which means "legal principles that are fundamental and well settled" [Garner, *Black's Law Dictionary* 67, pocket ed. (St. Paul, MN: West Publishing Co., 1996)], derives from the fact that early law came from old books in blackletter typeface. Simpons and Weiner, *The Oxford English Dictionary* 249, 2d ed. (Oxford, England: Clarendon Press, 1989).

2. Federal Practice and Procedure, Appendix A (St. Paul, MN: West Group, Supp. Dec. 1998).

3. Fed.R.App.P. 32(5) and 32(6).

4. Collier and Cotton, *Basic Desktop Design & Layout* 18 (London: Quarto Publishing plc, 1989).

5. Fed.R.App.P. 32(5)(A).

6. *Id.*

7. Fed.R.App.P. 32(6).

8. *Id.*

9. Collier and Cotton, *supra*, note 4 at 22. Here is another opinion from a discussion on underlining versus italics on the legal writing e-mail bulletin board from Chicago-Kent College of Law: "Many of the practitioners I know insist that underlining (rather than italics) in a brief is a sign of low culture . . . an indication that you don't take pride in your work product, since almost all lawyers have access to word-processing systems that will italicize." Thomas F. Blackwell of Chicago-Kent (10/13/98).

10. Collier and Cotton, *supra*, note 4 at 18-19.

11. Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, *Preliminary Draft of Proposed Revision of the Federal Rules of Appellate Procedure Using Guidelines for Drafting and Editing Court Rules and Preliminary Draft of Proposed Amendments to Appellate Rules 27, 28, and 32, Request for Comment 106* (April 1996).

12. Fed.R.Civ.P. 32.

Natalie Hanlon-Leh Receives 1998 Davis Award



Natalie Hanlon-Leh and DBA President David Ferguson

Denver Bar Association ("DBA") President David Ferguson presented the 1998 Richard Marden Davis Award to Denver attorney Natalie Hanlon-Leh on December 2. This year's award was presented during a dinner at the Brown Palace Hotel.

The award is presented annually by the Denver Bar Foundation, the law firm of Davis Graham & Stubbs, and the Davis family to a young Denver lawyer who, "although under age 40, has already so combined excellence as a lawyer with creative civic, cultural, educational and charitable leadership as to best exemplify the character and promise of Richard Marden Davis at that stage in his career. The award was established in 1992 in Davis' memory to keep alive his belief that great lawyers should be professional and community leaders.

Hanlon-Leh is a partner at Faegre & Benson LLP. She is the immediate past-president of the Colorado Women's Bar Association; a board member of Clinica Campesina, a community health center in Lafayette; founding board member of the Central Visitation Program, which provides supervised visitation for abused children; and advisory board member for the Community Services Block Grant for the City and County of Denver, which recommends distribution of federal funds to Denver nonprofit organizations.