



White Space—The Sequel

by K.K. DuVivier

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The year 2003 is slated to be a year of sequels: *Matrix II and III* (*Matrix Reloaded* and *Matrix Revolutions*), *Fast and Furious II*, and *Terminator 3*, just to name a few. This column, too, is a sequel of sorts, a follow-up of my 1992 column entitled “White Space.”¹ Just as an artist must be conscious of the “negative space” surrounding a form,² a legal writer should be aware of the white areas on a page of prose, the space between and around the words.

My earlier article on white space discussed using the physical pattern of paragraphs on a page to reflect the organization of your ideas and communicate the concepts through the paragraph structure, as well as through words. Key words stand out and have more impact when juxtaposed against empty space. Sentence and paragraph length can direct readers’ attention to focal points. Closely grouping information implies connections, whereas more distance implies separation. Dedicating more space to a concept emphasizes it, while less space de-emphasizes.

This column discusses white space as addressed by *The Redbook*.³ Aside from the “purposeful” use of white space to enhance meaning,⁴ *The Redbook* describes some of the document design considerations that allow you to use the white space on a page to make your memo or brief either inviting—or “offputting.”⁵

Word processors revolutionized the world of typing. Typewriters locked most documents into two options only: evenly, mono-spaced pica type of 10 characters per inch or elite type of 12 characters per inch. With word processing, there are almost limitless choices for font type, size, justification, and spacing—both vertical and horizontal.

Font Type

Most newspapers and books use serif typeface. Generally, serif type is easier to read for blocks of text because the little “feet” on the letters help differentiate them. Two of the most common serif typefaces are Times New Roman and Garamond. San serif typefaces do not contain the extra strokes on each let-

ter and are good for short passages or single lines, such as headings. **Helvetica** or **Arial** are two common sans serif typefaces.

Typewriters provided the same amount of horizontal space for each letter, and mono-spaced types such as **Courier** do the same. In contrast, a proportional typeface, which varies the space for an “i” and a “w,” is more efficient. Consequently, when page limits are an issue, a proportional, serif font such as Times New Roman or Garamond generally will provide more words per page.

Size

The rules for the federal appellate courts require 14-point type as the national standard for briefs.⁶ *The Practitioner’s Guide to the United States Court of Appeals for the Tenth Circuit* (“*Practitioner’s Guide*”) provides a bit of leeway, stating that the “Court prefers 14 point as required by Fed. R. App. P. 32(a)(5)(A), but 13 point is acceptable.”⁷ In Colorado state courts, “no less than 12 point font may be used for all documents.”⁸

Even within the same point size, typefaces vary in height. Some lowercase letters are higher than others, and some types of the same font size may have more condensed letters. Consequently, because of these variables, a passage typed in Garamond will take up less space than a passage typed in the same font size of Times New Roman.

Example: This sentence is in 12-point Times New Roman.

Example: This sentence is in 12-point Garamond.

Don’t be tempted to try to eke more pages out of a brief by putting extensive text into footnotes. Although some courts al-

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K.K. DuVivier will be happy to address them through the *Scrivener* column. Send your questions to: kkdುವಿವಿ@law.du.edu or call her at (303) 871-6281.



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low smaller typeface for footnotes, judges read a lot of briefs, and attempts to circumvent their page-limit rules rarely will go unnoticed.

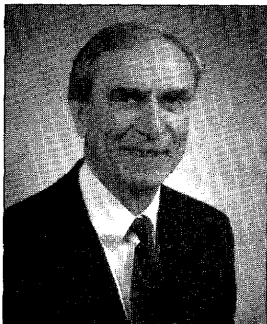
Justification

Justification describes how letters line up along the side of a page: a fully justified text forms a block on both the right and left sides of a page. Although printers generally use full justification for newspapers and books, left justification is better for most briefs and memos, and is dictated by the Colorado courts.⁹ Not only can you avoid problems of stretching out words and citations by using only left justification, but readers can use the visual cues along the right margin to determine the end of a sentence or paragraph.

Spacing

Indent the first line of each paragraph. This visually marks the beginning of each new paragraph and idea. Furthermore, your document is more professional-looking if you use the tab to make these indents uniform.

Most court rules require that memos and briefs submitted to a court be double-spaced vertically.¹⁰ Always follow the court's requirements. In addition, think about how the document will appear to readers. Printed materials do not leave headings dangling at the bottom of a page. If you end a page of your brief or memo with an "orphan" heading that has no related text on the page, it may look as though you did not proof the document. Adjust page breaks so that no single line or heading is separat-



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- Active civil trial lawyer in the Denver area for more than 30 years, with broad experience in a variety of areas, including construction, personal and business torts, product liability, professional liability, surety and insurance.
- Represented plaintiffs, defendants and insurance/surety companies.
- Arbitrated and mediated numerous cases involving a wide variety of subject matters.
- Expert witness services in legal malpractice cases for both plaintiff and defendant and in insurance, tort and surety matters.
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ed from the remaining paragraph. Many word processors have a setting called "widows and orphans" or "keep together" that can help eliminate this problem automatically.

Conclusion

Legal writers must focus first on the words they choose to convey their messages. However, good writers also are conscious of the subliminal message conveyed by the white space that surrounds the words on a page. Mono-spaced typewriter-like typeface may convey the impression that you are inflexible or out of date. Too small a type size, tighter spacing, or excessive footnotes may imply you are either ignorant of the rules or trying to circumvent them, and therefore untrustworthy. Cramped pages without paragraph breaks or dangling headings unrelated to any text may suggest disorganization.

The *Practitioner's Guide* states, "[T]he judges uniformly prefer a shorter, well edited brief to one that pushes the limits."¹¹ White space is a valuable tool for conveying consideration for your readers. It can enhance your meaning, at the same time giving your readers a break and a chance to absorb the words. Furthermore, your brief should project a visual impression of confidence that you know and comply with the rules and that your thoughts and arguments are clear and well organized.

NOTES

1. DuVivier, "White Space," 21 *The Colorado Lawyer* 441 (March 1992).
2. Edwards, *Drawing on the Right Side of the Brain* 100 (Los Angeles, CA: J. P. Tarcher, Inc., 1979).
3. Garner, *The Redbook, A Manual of Legal Style* (St. Paul, MN: West Group, 2002).
4. *Id.* at § 4.6.
5. *Id.* at § 4.1.
6. Fed. App. Rule 32.
7. *Practitioner's Guide to the United States Court of Appeals for the Tenth Circuit* at § VI(B)(2). The *Guide* can be accessed on the Tenth Circuit website: <http://www.ck10.uscourts.gov>, then click on Tenth Circuit Rules and Forms and Tenth Circuit Practitioner's Guide.
8. C.R.C.P. Chap. 2, Rule 10.
9. *Id.*
10. *Id.*
11. *Practitioner's Guide, supra*, note 7. ■

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