

GOING IN STYLE (#2): ON TYPOGRAPHY, PART 1

The first column in this series addressed citations in appellate briefs. Since citation forms are mostly covered by guidelines in the California Style Manual (4th ed. 2000), that topic was relatively straightforward.

Now, for the next two issues, we head into the less-charted territory of typography, “the visual component of the written word,” as defined in Matthew Butterick’s *Typography for Lawyers: Essential Tools for Polished & Persuasive Documents* (2nd ed. 2015) page 20. The bottom line is that typographic decisions matter and appellate attorneys should recognize and make typographic decisions based on readability, not habit or even tradition.

Matthew Butterick is a typographer-turned-lawyer whose expert opinions have influenced the Formatting Guidelines of the Second District Court of Appeal. His book provides a window into the “visual components of the written word,” specifically type composition, text formatting, and (to be addressed in a subsequent column) page layout. As one might expect, Butterick has an argument for why we should care about typography, which I will cite (Butterick, *supra*, at pp. 23–28) and restate: the heart of our work as appellate attorneys is making points and arguments in writing – communication in written form. The visual component of a text is part of communication in written form. What a text looks like can make reading easier or harder, can help or hinder the goal of getting our points and arguments across in a persuasive way. (See also Ruth Anne Robbins, *Painting with print: Incorporating concepts of typographic and layout design into the text of legal writing documents* (2004) 2 J. Assoc. of Legal Writing Directors 108, 111–113 [“Visual effects . . . are as critical an element of persuasion as proper grammar and adherence to the rules of court and citation form”].)

Which is not say there is one way to which we all must adhere in typographic matters. Butterick provides a lot of emphatic ‘should dos,’ and Robbins frames her advice as “grounded in science,” but if there are no court rules on point, the decisions are ultimately up to the individual writer. The point here is to encourage awareness of the decisions to be made and provide some context for making informed decisions, keeping in mind the basic principle that “[t]ypography is *for the benefit of the reader*, not the writer.” (Butterick, *supra*, at p. 21 [italics in original].)

TYPE COMPOSITION

“Type composition” concerns what you can put on the page with the keyboard. (Butterick, *supra*, at p. 37.) Butterick discusses many specific points under this heading. We’ll look at four.

• Quotation marks

I tend to be skeptical of experts telling me how I should do things, but reading *Typography for Lawyers* has led me to reconsider a couple of long-time practices. For instance, I have always preferred straight quotation marks to curly or “smart” quotes. Straight quotes seem admirably utilitarian while curly ones strike me as unnecessarily fancy. I also don’t like handing over control to decide which marks go where to the word processing program. As it happens, this is the very first topic of Butterick’s chapter on Type Composition and it contains one of his more emphatic ‘shoulds’: “*Curly quotes* are the quotation marks used in good typography. . . . [S]traight quotes should never, ever appear in your documents.” (Butterick, *supra*, at pp. 38–39 [italics in original].) Butterick says “curly quotes are more legible on the page and match other characters better” and, given the easy use of curly quotes in word processing programs, “straight quotes are one of the most grievous and inept typographic errors.” (*Id.* at p. 39.) Yikes. I have switched to curly quotes. I still don’t like them, but if they make

reading easier and straight quotes can be considered grievously inept, I can't justify sticking with a mere preference.¹

Note that inch and foot marks (as in 5'10") should look like straight quotes. If you use WordPerfect, the program automatically makes an apostrophe or quote mark typed after a number into the proper straight form for feet or inches. In Word or LibreOffice (a free, open-source Word equivalent), one can type an apostrophe or quote mark, which appears curly, then Ctrl-z (the "undo" command), and the curly mark will change into the inch or foot symbol.

● **Emphasis**

Butterick is a hard "no" on underlining: "It's ugly and it makes text harder to read." (Butterick, *supra*, at p. 74.) Use bold or italic for emphasis, but not too much and not together. (*Id.* at p. 81.)

Psychological research on legibility suggests **bold** text is the most effective way to create emphasis. (*Robbins, supra*, at p. 119.)

● **Hyphens and dashes**

Butterick helpfully clarifies the distinctions between hyphens, en-dashes, and em-dashes. (Butterick, *supra*, at pp. 46–47.) A hyphen — located on the key to the right of the zero — is punctuation for a word split onto the next line, some multipart words, and phrasal adjectives when required for clarity (e.g., 'five-dollar bills' versus 'five dollar bills'). En-dashes, a bit longer than hyphens, are for a range of values (e.g., 100–114) or a connection between words (California–Oregon border). Em-dashes are about twice long as en-dashes; they are "used to make a break between parts of a sentence . . . when a comma is too

¹ To switch between smart and straight quotes in Word Perfect, click on the Tools menu, select QuickCorrect, and then check or uncheck the boxes under the SmartQuotes tab.

In Word, access the straight or smart quote option by clicking File, Options, Proofing, AutoCorrect Options, and then the AutoFormat As You Type tab.

weak, but a colon, semicolon, or pair of parentheses is too strong.” (Butterick, *supra*, at p. 47.) Em-dashes can have spaces before and after or not. (*Ibid.*)

Typing en- and em-dashes is easy in WordPerfect — two consecutive hyphens creates an en-dash, three an em-dash. This works whether you have spaces before and after or not. There is a bit less control in Word. Two hyphens without a space before and after creates an em-dash; two hyphens with spaces before and after creates an en-dash. Thus, in Word, if you want no spaces around an en-dash (e.g. for a number range) or spaces around an em-dash, you have to back up and add or remove spaces.

- **Sentence spacing**

Here’s Butterick on the most tribal type composition issue: “**Always put exactly one space between sentences.** Or more generally: put exactly one space after any punctuation.” (Butterick, *supra*, at p. 41 [bold in original].) As to the many dissenters in the legal profession, Butterick asserts expert authority on this point: “[O]ne space is the well-settled custom of professional typographers. You don’t need to like it. You only need to accept it.” (*Ibid.*) You don’t, of course, as Butterick acknowledges: “If you’d rather rely on personal taste, I can’t stop you. But personal taste doesn’t repeal the rule. . . . [and] readers won’t detect the difference between a principled departure from convention and willful ignorance.” (*Id.* at p. 43.)

The experts explain that two spaces made sense in the typewriter days when every letter took up the same space (“monospace” type). That gave words a spread-out look that two spaces between sentences balanced. (See Robbins, *supra*, at p. 129.) With the “proportional space” fonts we use these days, words aren’t spread out so the extra space is superfluous, disrupts the balance of white space, and can create distracting rivers of white space down a page. (Butterick, *supra*, at p.

41.) Butterick’s mantra is look at a book or magazine or newspaper. If they aren’t using two spaces, why are attorneys? A counterargument might note that an appellate brief is none of those things. Notably, the California Courts of Appeal and Supreme Court continue to use two spaces between sentences in their slip opinions, although the official reporters (remember those?) use just one.

At this point, notwithstanding the typographic experts, whether one uses one or two spaces after a sentence remains a personal preference. Personally, I think one space looks better. My suggestion is to consider both and use what you think looks better (as opposed to continuing to do what you’ve always done based on what someone told you should be done and is now an embodied habit built into your fingers [typographically, that’s not a good enough reason!]).

TEXT FORMATTING

Text formatting involves “the appearance of characters and text.” (Butterick, *supra*, at p. 15.) This includes fonts, about which Butterick, a font designer, has much to say, as well as other topics for brief writers to consider.

• All capital text

For instance, Butterick discourages the use of all capital text except for headers shorter than one line (e.g., TABLE OF AUTHORITIES). (Butterick, *supra*, at pp. 82–83.) According to the experts, using all caps for longer text, such as argument headings, is counterproductive. While presumably intended to emphasize importance, the lack of visual variation in all caps text leads readers to skim rather than absorb the communication. (*Id.* at p. 83.) Robbins, *supra*, at page 115, cites readability studies and makes the same point in a subsection she titles, “Stop screaming at me in rectangles: Why all capital letters just don’t work.”

- **Title case/initial capitals**

In his section on headings, Butterick makes another assertion that could be controversial among appellate attorneys: “Always Avoid Title Case, Because Your Headings Aren’t Titles.” (Butterick, *supra*, at p. 91.) Title case is the same as initial capitals, with a capital for the first letter of every major word. Bryan Garner also recommends against initial caps/title case. (Bryan Garner, *The Winning Brief* (2nd ed. 2015) p. 318–323). Title case takes a reader’s eyes up and down in a way that can detract from comprehension. Butterick suggests highlighting headings by using bold text and/or a slightly larger font size. (Butterick, *supra*, at p. 91.)

- **Mixing fonts**

For more contrast, Butterick and Robbins both endorse the option of using of a wholly different font for headings. (Butterick, *supra*, at pp. 109–110; Robbins, *supra*, at pp. 127–128.) Robbins recommends a serif font for the body of the text and a sans serif font for headings, as in this article. (Robbins, *supra*, at pp. 127–128.) Butterick is okay with mixing serif fonts, but discourages the use of more than two in any case. (Butterick, *supra*, at pp. 109–110.) Butterick notes that “[m]ixing fonts is like mixing patterned shirts and ties Some people have a knack for it; some don’t.” (*Id.* at p. 109.) I prefer not to be typographically experimental in my briefs and will continue to use just one font, Century Schoolbook, all the way through. But I have stopped using all caps for my argument headings and switched to one-point larger, bold sentence case (with only the first word and proper nouns capitalized).

- **Font size**

Butterick and Robbins both tell us 10 to 12 point fonts are the easiest to read. (Butterick, *supra*, at p. 86; Robbins, *supra*, at pp. 121–122.) California Rules of Court, rule 8.204(b)(4), says “the font size [used in

an appellate brief], including footnotes, must not be smaller than 13-point.” (The Rules erroneously use an en-dash rather than a hyphen in “13-point” — everybody makes mistakes!) But different fonts look different at different sizes:

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To me, 13-point Century Schoolbook looks elementary school big, although it is acceptable within the rules. 12-point Century Schoolbook and 13-point Times New Roman are close enough in size that my use of the former has yet to be deemed in violation of rule 8.204(b)(4).

● **Font selection**

When it comes to font selection, font designer Butterick predictably has some strong opinions. His main advice is to eschew the “system fonts” that are built into word processing programs and pay for professionally designed fonts, although he grants that some system fonts are “generally tolerable.” (Butterick, *supra*, at pp. 78–79, 113–115.) On the other hand, he dislikes Arial more than Comic Sans. Arial, he writes, “is merely a bland, zero-calorie Helvetica substitute.” (*Id.* at p. 80.) Butterick is also critical of Times New Roman, which he sees as “not a font choice so much as the absence of a font choice, like the blackness of space is not a color. To look at Times New Roman is to gaze into the void.” (*Id.* at p. 119.) From Butterick’s typographer perspective, “the main issue” with Arial and Times New Roman is overuse, which makes them “permanently associated with the work of

people who will never care about typography.” (*Id.* at p. 80.) Notably, the Second District Court of Appeal’s Formatting Guidelines (not rules) state, “Do not use Times New Roman.” Among the system fonts Butterick finds tolerable are, for sans serif, Franklin Gothic and Helvetica, and, with serifs, Century Schoolbook and Garamond. (See the complete list at Butterick, *supra*, p. 79.)

Under California Rules of Court, rule 8.204(b)(2) and (3), “any conventional font may be used The font style must be roman.” “Roman” style just means the basic font is upright as opposed to angled. All the conventional fonts are roman, so the brief writer has to make a choice. Typography for Lawyers has several pages of font examples and commentary. (Butterick, *supra*, at pp. 116–128.) Ultimately, Butterick writes, “We can — and should — use pragmatic considerations to narrow down the space of possibilities. But when it’s time to choose from among those possibilities, there’s some art, humanity, and expressiveness to it. Just as no one can tell you the best opening sentence for your brief, no one can tell you the best font for that brief either.” (*Id.* at p. 111.) If you have not already made an explicit choice of font, I suggest saving an old brief as a test file, “selecting all” (Ctrl-a), and then trying a few different fonts to see what you like best. Asking others what they think can be helpful too. My only recommendation is to avoid using something so unusual or stylized that the reader is compelled to ponder the choice of font rather than the points being made.

CONCLUSION

No one expects appellate attorneys to be typography experts, or to incorporate every bit of typography expert opinion. But hopefully you are convinced that (1) how your briefs look matters, and (2) with a bit of awareness, it’s not too hard to make them look typographically sophisticated. Next time we will review some principles of page layout,

how text looks on the page. (If you have thoughts to share on typography or other elements of style in brief writing, send an email to abm@adi-sandiego.com.)