

Review of Matthew Butterick's *Typography for Lawyers* (Part 2)

By Matthew R. Salzwedel

Editor's Note: This is the second part of a two-part article. The first part appeared in last month's issue.

Use ALL CAPS sparingly, if at all

You'll find more all-caps text in contracts than in briefs. Butterick says that all-caps text is fine for short headings—such as “TABLE OF CONTENTS”—as well as headers, footers, captions, and labels, especially if the all-caps text is smaller than the main text. Apart from these limited applications, he says to avoid it.¹

Why should lawyers limit their diet of all-caps text to these few circumstances? As Butterick points out, readers hate large blocks of all-caps text because it's more difficult to read than lowercase text. Those readers who can will simply skip over it. And for those readers who don't have the luxury of skipping over large blocks of all-caps text (e.g., law clerks, opposing counsel, and clients), they'll just be annoyed by it.²

Yet contract drafters can't seem to get enough of all-caps text. They'll write the parties' names in all caps. They'll write warranty disclaimers in all caps. They'll write limitation-of-liability provisions in all caps. They'll write jury-trial waivers in all caps. And after they're done writing these provisions (and often more) in all caps, a large

part of the contract is in all caps. Why, pray tell, do lawyers persist in using so much all-caps text? “It's the way we've always done it.” “Statute A in State X requires it, so it's best to be extra careful.” These objections are mostly rationalizations, not justifications, for inertia or personal preference.

Despite the myth, the Uniform Commercial Code's definition of “conspicuous” doesn't *require* all-caps text; it says that a statement can be conspicuous if it's “in contrasting type, font, or color to the surrounding text of the same size.”³ *A Manual of Style for Contract Drafting* cites only three instances—statutes in Arizona, Florida, and Oregon—that may require all caps for certain statements.⁴ Besides these limited, state-specific contexts, I can find no other authority that requires it.

Finally, blanketing a contract with all-caps text might lead to embarrassment, if nothing else. For example, one court that had to decide whether a company's arbitration agreement written entirely in all caps was enforceable criticized the company for writing it that way, observing that “when everything is emphasized, nothing is emphasized.”⁵

Butterick's right that overusing all-caps text “is a truly noxious habit.”⁶ It's time for the legal community to get rid of it unless a specific law or court rule requires it.

Don't put ordinal-number contractions in superscript

An ordinal defines a thing's position in a series—for example, “first,” “second,” or “third.” Word's default setting automatically changes ordinal-number contractions such as “3rd,” “13th,” and “22nd” to superscript: “3rd,” “13th,” and “22nd.” Butterick recommends turning off this default setting.⁷ For those of you who follow *The Bluebook* or the *ALWD Guide to Legal Citation*, they, too, prohibit ordinal-number contractions in superscript.⁸

To change Word's default setting that converts ordinal-number contractions to superscript, click on <File> → <Options> → <Proofing> → <AutoCorrect Options> → <AutoFormat>, and uncheck the box next to <Ordinals (1st) with superscript>. After you do that, click on the nearby tab <AutoFormat As You Type> and uncheck the same box.

Turn on kerning

Kerning adjusts specific pairs of letters to improve their spacing and fit. Butterick says to turn on kerning because it reduces large gaps between certain pairs of letters and makes them consistent with the rest of the font.⁹

Word's default setting turns off kerning, so you need to turn it on by clicking on <Home> → → <Advanced> and

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then checking the box to the left of <Kerning for Fonts>. In the box to the immediate right of <Kerning for Fonts>, choose <8 Points and above>.

Use curly quotes instead of straight quotes

Except for foot (') and inch (") marks, documents shouldn't contain perfectly vertical quote marks, also known as "straight quotes."¹⁰ Butterick explains that straight quotes are yet another vestige of the typewriter: "By replacing the curly opening and closing quotes with ambidextrous straight quotes, two [typewriter] slots became available for other characters."¹¹ But even when ordinary people used typewriters, printing presses and professional typographers always used curly quotes.

Word's default setting turns on curly quotes (Microsoft calls them "smart quotes"), but if you need to temporarily change that setting, click on <File> → <Options> → <Proofing> → <AutoCorrect Options> → <AutoFormat>, and uncheck the box next to <"Straight quotes" with "smart quotes">. After you do that, click on the nearby tab <AutoFormat As You Type> and uncheck the same box.

Because Word uses curly quotes by default, it's now rare to see straight quotes in legal documents. But straight quotes can sometimes show up in draft briefs if the writer cut and pasted text from an electronic database or website that uses straight quotes. If you find straight quotes in a Word document and want to replace them with curly quotes, press <Ctrl+F> and search for single and double quotes. When you find the straight quotes, manually delete them and insert curly quotes.

Create line lengths of 45 to 90 characters

Butterick also recommends limiting line length because "[s]horter lines are more comfortable to read than longer lines [and] make a big difference in the legibility and professionalism of your layout."¹² Individual lines shouldn't be longer than 90 characters (with spaces), which you can check by selecting the text in an individual line and then using the word-count function (in Word, click on <Review> → <Word Count>).¹³ If you set the left and right margins at no less than 1.5 inches, it shouldn't be a problem staying under the 90-characters-per-line limit.

Use margins of no less than 1.5 inches

Most lawyers use 1-inch left and right margins for their documents. But Butterick says that 1-inch margins are too small for proportionally spaced fonts because these fonts don't use as much horizontal page space compared to traditional monospaced fonts. He instead recommends 1.5- to 2-inch left and right margins. By increasing margin width to at least 1.5 inches, you'll create more white space, and that white space will enhance the document's readability.¹⁴

But what about court rules that limit the length of briefs and other documents to a certain number of pages? Won't increasing the left and right margins beyond one inch give me less room to write? Probably not. In the past, courts often limited the length of briefs to a specific number of pages. But most courts now calculate brief length by counting the total number of words *or* the total number of pages. Because of these rule changes, increasing the width of left and

right margins won't limit how much you can write.

Although decreasing line length by increasing the width of left and right margins aids readability, I differ with Butterick's margin-width advice in one respect: I wouldn't set the left and right margins of a brief or contract beyond 1.5 inches.

Lawyers get diminishing returns if they increase the width of left and right margins beyond 1.5 inches. As margins progressively increase beyond 1.5 inches, a brief or contract will get longer, and longer, and longer. Even if a brief follows the court's word-count limits, for example, judges and their law clerks may be less eager to pick up a 50-page brief with 2-inch margins than a 43-page brief with 1.5-inch margins. If anything despairs overworked law clerks more than having to muddle through a poorly written brief, it's the sight of a 50-page brief that looks—just from its sheer length—like it will take an entire day to read.

Finally, I acknowledge that even 1.5-inch left and right margins may seem too wide to the eyes of some writers. If you can't tolerate the sight of 1.5-inch margins, don't revert to 1-inch margins. Never go below 1.25 inches. Butterick would still disapprove of that choice, but splitting the difference between 1.5- and 1-inch margins is a passable compromise.

Use left-aligned or justified text

Left-aligned text has a clean left edge and an irregular right edge. Fully justified text has clean left and right edges.¹⁵ Although Butterick prefers left-aligned text, he concedes that the choice is a matter of personal preference, "not a signifier of professional typography."¹⁶

I think that justified text is cleaner and easier to read. Other lawyers swear by left-aligned text. There's no clear trend in the courts. The United States Supreme Court justifies the text of its opinions, but some lower courts use left-aligned text and others justify it. Justifying text in a brief submitted to a judge who uses left-aligned text probably won't make any difference. But if the judge is used to reading and writing left-aligned text, it can't hurt to mimic the judge's preference.

Hyphenate justified text

If you justify text, Butterick says to turn on Word's automatic-hyphenation function that breaks individual "words between lines to create more consistency across a text block."¹⁷ If you justify text and don't use automatic hyphenation, the result can be "gruesomely large spaces between words."¹⁸ Word's default setting doesn't turn on automatic hyphenation, so you have to turn it on by clicking on <Layout> → <Hyphenation> and then selecting <Automatic>.

Hyphenation is particularly important if the left and right margins are greater than one inch wide. Butterick explains that as line length decreases, Word "can only break lines at word spaces" and there are "fewer possible break points in each line, making awkward breaks more likely."¹⁹ If you insist on sticking with 1-inch margins (despite the advice in the previous section), hyphenation will still improve the look of the text. But because more words can fit on each line with 1-inch margins, hyphenation is less necessary to prevent the ugly white-space gaps that occur more often when the margins are greater than one inch.

All in all, give your legal writing curb appeal

Whether a home has curb appeal is a key factor in whether it sells quickly. A home can have a gorgeous interior, but if the owner has neglected the lawn and landscaping, many potential buyers will pass on it. The last thing new-home buyers want to do is spend time and money that they don't have making the home look as great on the outside as it does on the inside.

In legal writing, as in selling homes, optics matter.

Typography for Lawyers gives you the tools to improve the curb appeal of your legal writing. If you heed Butterick's recommendations, they'll set apart your work from that of the thousands of lawyers who either don't know about or don't care about the benefits of professional typography. And the best part about his advice is that adopting it is free and relatively simple.

But if you choose to ignore the basic principles of professional typography in your legal writing, know that astute readers might assume the worst about your work—just as a nosy neighbor, walking past a

home's overgrown, weed-filled lawn, might surmise: "If they can't keep their lawn looking nice, Lord knows what that home looks like on the inside." ■

The provenance for this article is 10 Takeaways from Typography for Lawyers, which the author originally published at Lawyerist.com on July 7, 2011, and was last updated on October 10, 2015.

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ENDNOTES

1. Butterick, *Typography for Lawyers: Essential Tools for Polished & Persuasive Documents* (Thomson Reuters, 2d ed 2018) at 83.
2. *Id.* at 82.
3. UCC 1-210(10) and UCC 2-316(2) [disclaimers of the implied warranty of merchantability must be "conspicuous" but not requiring all-caps text]. See also *Wait v Roundtree Mobile, LLC*, unpublished opinion of the United States District Court for the Southern District of Alabama, issued November 15, 2015 (Civil Action No. 15-00285-CG-M), at *12 ("While in a smaller size font, the statement is printed in bold, also meeting the definition of 'conspicuous' under Alabama's version of the UCC).
4. Adams, *A Manual of Style for Contract Drafting* (ABA, 4th ed 2018), § 16.24.
5. *Roberts v Blue World Pools, Inc.*, unpublished opinion of the United States District Court for the Western District of Kentucky, issued September 11, 2015 (Civil Action No. 3:15-CV-00335-TBR), at *7 (stating that "having the entire one-page arbitration agreement capitalized is a poor way to draw attention to the specific rights being waived," but holding that the agreement wasn't procedurally unconscionable (citing Butterick, *Typography for Lawyers* at 87)).
6. Butterick, *Are Two Spaces Better Than One? A Response to New Research*, Butterick's Practical Typography, 2d ed (April 30, 2018) <<https://practicaltypography.com/are-two-spaces-better-than-one.html>> (accessed October 11, 2018).
7. *Typography for Lawyers* at 100–101.
8. *The Bluebook: A Uniform System of Citation*, Rule 6.2(b)(iii) and *ALWD Guide to Legal Citation*, Rule 4.3(b).
9. *Typography for Lawyers* at 94.
10. *Id.* at 38–40.
11. *Id.* at 39.
12. *Id.* at 140.
13. *Id.*
14. *Id.* at 141–142.
15. *Id.* at 133–134.
16. *Id.* at 134.
17. *Id.* at 145.
18. *Id.* at 134.
19. *Id.* at 146.



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