

Per Curiam

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The Chair's Comments



Ambrose

The time has come to write my final Chair's Column, at the conclusion of an incredibly busy, productive and rewarding year. Although 12 months have passed far more quickly than I could have imagined just last summer, our relatively young Section has packed an incredible amount into that small window. I could not be more proud of what we've ac-

complished or more appreciative of the energy, commitment, creativity, enthusiasm, and determination of the members of this Section. Just a few highlights of our year make the point:

The Appellate Practice Section continues what has become a centerpiece of the Bar Association's fall calendar, the annual Appellate Practice CLE program. In October 2015, under the leadership and direction of Michelle Connell and Tyler Brooks, "Appeals: The Next Level" was met with extremely positive reviews from the sizeable group of attendees (both those who braved the weather to join the live program and those who participated via webcast). Since assuming responsibility for the CLE from the Appellate Rules Committee just a few short years ago, the Section has continued to build on past successes by, among other things, refining the pro-

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Appellate Practice Section Launches Podcast

The first episode of the Section's new podcast, a conversation with Katy Parker and Chris Brook about handling high-profile appeals, is now available on iTunes. The second episode with John Maddrey and Chris Browning discussing their representation of the State of North Carolina in civil appeals will be available soon. Check back regularly for new episodes. The podcast is hosted by section member Chris Haaf with Kilpatrick Townsend & Stockton in Winston-Salem and is available here: <https://itunes.apple.com/us/podcast/ncba-appellate-practice-section/id1120279049>.

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Typography for Appellate Lawyers: Improving Appellate Briefs Through Better Fonts

By Judge Richard Dietz, Drew Erteschik, Clark Tew and J.M. Durnovich

Introduction

We know what you're thinking: Why should I care about fonts? The authors of this article—an appellate judge and a few appellate lawyers—would like to answer this question in two parts.

The first part discusses the current font rules for our state appellate courts, and why the fonts favored by those rules are not optimal for appellate briefs.

The second part briefly describes how fonts within the Century family increase readability and retention—features that can give appellate lawyers a competitive edge.

The Current Font Status Quo

Rule 28 of the North Carolina Rules of Appellate Procedure mentions two types of fonts: "proportional" and "non-proportional."

Proportional font uses different widths for different characters. In other words, an "i" takes less space than a "w." These fonts are designed to promote readability by allowing your eyes to smoothly transition across lines of text. Also, proportional fonts mimic the spacing in our handwritten text, creating a more natural look.

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Non-proportional fonts, in contrast, use the same width for each character. In other words, an “i” takes up the same space as a “w.” These fonts were designed for editing documents typed on typewriters. See Matthew Butterick, *Typography for Lawyers* 81 (2010). Back then, the only way a typewriter could white out a letter was if every letter was the same size. See *id.*

Currently, the Rules say you can use either proportional or non-proportional fonts. The examples they give for these fonts, however, are limited. The only non-proportional font discussed in the Rules is Times New Roman. The only proportional fonts discussed in the Rules are Courier and Courier New.

Unfortunately, neither Times New Roman nor Courier was designed for brief-writing. What is more, neither of these fonts is particularly good for appellate briefs.

This is Times New Roman. It was developed in the 1920s by a British newspaper, *The Times of London*. It was designed for a specific purpose: to allow speed-skimming the newspaper’s articles. See U.S. Court of Appeals for the Seventh Circuit, *Practitioner’s Handbook for Appeals* § 23, at 131-32.

The letters in Times New Roman are narrow, closely spaced, and designed to force readers’ eyes across the page as quickly as possible. Another benefit of this closely spaced font was that it left ample space for advertisements. See Tom Vanderbilt, *Courier, Dispatched*, Slate (Feb. 20, 2004), http://www.slate.com/articles/business_and_tech/design/2004/02/courier_dispatched.html (last visited June 8, 2016). It was not, however, designed for intensive reading—for example, reviewing lengthy appellate briefs. The emphasis was on speed, not retention.

Today, for whatever reason, Times New Roman has become the standard. As one commentator has remarked, Times New Roman is “the font of least resistance.” See A Brief History of Times New Roman, *Typography for Lawyers*, available at <http://typographyforlawyers.com/a-brief-history-of-times-new-roman.html> (last visited June 8, 2016). It “is not a font choice so much as the absence of a font choice.” *Id.* It is the beige of fonts.

This is Courier New, a font within the Courier family. Courier was developed by IBM in the 1950s, but it became the standard typewriter font in the 1960s. See Vanderbilt, *Courier, Dispatched*.

Courier’s original purpose had even less to do with reading retention than was the case with Times New Roman. As described above, this “proportional” font uses letters that are all the same size, making it easier to edit documents on a typewriter using white-out. At the time, this function was new and stream-

lined.

Even after typewriters began to die out in the 1980s and 1990s, Courier New stuck around. Perhaps it was because writers found it familiar. Eventually, it became the basic font for computer processing. See *id.* From there, like Times New Roman, it gained popularity because of its ubiquity, not its attributes.

Recently, governments and private companies have started to reject Courier as an old, outdated, and “clunky” font. See *id.* Like all nonproportional fonts, Courier is not an efficient use of each page because it takes up more space than necessary.

It is also more difficult to read than newer, better-designed fonts. See 7th Cir. Practitioner’s Handbook at 132. This is, in part, because “[w]hen every character is the same width, the eye loses valuable clues that help it distinguish one letter from another.” *Id.*

Apart from the “proportional”-vs.-“non-proportional” nomenclature described above, fonts can also be separated into two groups: “serif” or “sans-serif.”

Serif fonts are characterized by small ticks extending off the ends of characters, like at the top of this “J.” Serifs matter because they help our eyes separate lines of text, similar to how you might use a ruler to underline a row of text. Times New Roman and Century Schoolbook are examples of serif fonts.

Sans-serif fonts, in contrast, do not have those ticks. Arial is an example of a sans-serif font.

Believe it or not, these tiny ticks have a real impact. Researchers have concluded “that long passages of serif type are easier to read and comprehend than long passages of sans-serif type.” See 7th Cir. Practitioner’s Handbook at 129. One study found that, readers retained texts in serif font nearly 10% better than they retained equivalent texts in sans-serif fonts. See Michael Gasser, et al., *The Influence of Font Type on Information Recall*, 7 N. AM. J. PSYCHOL. 181 (2005).

These numbers are significant. A 10% increase in an appellate court’s retention might mean the difference between winning and losing on appeal. That’s a lot of competitive edge just for a few clicks of your mouse.

Fonts in the Century Family = Better Readability and Retention

One particular type of serif font has emerged as the favorite of appellate courts: fonts within the Century family.

Century Schoolbook, in particular, has been called the “crème-de-la-crème of legal fonts.” Mark Wilson, *5 Non-Times New Roman Fonts Courts Use in Their Opinions*, GREEDY ASSOCIATES (Nov. 26, 2014), http://blogs.findlaw.com/greedy_associates/2014/11/5-non-times-new-roman-fonts-courts-use-in-their-opinions.html (last visited June 8, 2016).

Among its attractive features, it is “highly readable, yet commands an air of authority with letters that take up more space than Times New Roman.” *Id.* *Typography for Lawyers* ranks Century Schoolbook on a short “A list” of fonts. Times New Roman and Courier New, by contrast, made the “C list” of “questionable” fonts for lawyers.

While you may not immediately recognize the name Century Schoolbook, you’ve been reading legal opinions in this font since your first year of law school. The U.S. Supreme Court publishes its opinions in Century Schoolbook. Likewise, Rule 33(1)(B) of the Supreme Court’s Rules states that the text of all major documents, including briefs, “shall be typeset in a Century family (e.g., Century Expanded, New Century Schoolbook, or Century Schoolbook) 12-point type.”

In recent years, the North Carolina Supreme Court and the North Carolina Court of Appeals have begun publishing their opinions in Century Schoolbook. Likewise, the U.S. Courts of Appeals for the Fifth, Seventh, and Federal Circuits use and endorse Century-family fonts.

The Seventh Circuit has offered this explanation for this choice:

The briefs, opinions of the district courts, essential parts of the appendices, and other required reading add up to about 1,000 pages per argument session. Reading that much is a chore; remembering it is even harder. You can improve your chances by making your briefs typographically superior. It won’t make your arguments better, but it will ensure that judges grasp and retain your points with less struggle. That’s a valuable advantage, which you should seize.

7th Cir. Practitioner’s Handbook at 131.

For that same reason, fonts within the Century family—especially Century Schoolbook—are used in situations where readability and retention matter most. As one non-exclusive example, pharmaceutical researchers recommend Century Schoolbook for prescription bottle labels—a place where suboptimal font choice could have serious consequences. See Janan Smither and Curt Braun, *Readability of Prescription Drug Labels by Older and Younger Adults*, 1 J. CLIN. PSYCHOL. MED. SETTINGS 149-54 (1994).

Switching to fonts in the Century family may also produce cost savings. As NPR reported, when a major university recently switched its e-mail system’s default font from Arial to Century, it saved thousands of dollars annually in printing costs. See *Changing Font to Save Ink*, NPR (April 6, 2010), www.npr.org/templates/story/story.php?storyId=125639616 (last visited June 8, 2016).

This article, by the way, is written in Century Schoolbook font. To see the difference, here is a comparison of Courier (non-proportional, serif), Arial (proportional, sans-serif), Times New Roman (proportional, serif), and Century Schoolbook (also proportional, serif):

The quick brown fox jumps over the lazy dog.
(Courier)

The quick brown fox jumps over the lazy dog. (Arial)

The quick brown fox jumps over the lazy dog. (Times New Roman)

The quick brown fox jumps over the lazy dog. (Century Schoolbook)

* * *

We can (hopefully) all agree that appellate briefs ought to be written in a font that serves two purposes: readability and retention.

After all, appellate briefs are not meant to be quickly skimmed over a morning cup of tea along with newspaper advertisements (*The London Times*’ Times New Roman). Nor are they meant to meet the mechanical needs of a typewriter’s white-out function (Courier New).

As the Seventh Circuit explained, “*The Times of London* uses Times New Roman to serve an audience looking for a quick read. Lawyers don’t want their audience to read fast and throw the document away; they want to maximize retention.” 7th Cir. Practitioner’s Handbook at 131.

North Carolina’s appellate courts, by switching to Century Schoolbook for their opinions, apparently agree.

In view of the Supreme Court’s use of Century Schoolbook, perhaps the Court will amend the Rules of Appellate Procedure to endorse that font or adopt other font reforms based on the issues discussed above. The authors are hopeful that this article may be useful in inviting a dialogue on the topic.

Conclusion

While fonts may not be at the top of everyone’s list of important items to tackle, we hope that this article was thought-provoking.

We welcome your comments on the information in this article. We would love to pick up this discussion with you by phone or by e-mail—particularly if your e-mail is written in Century Schoolbook.

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Drew Erteschik is a partner in the Raleigh office of Poyner Spruill LLP. He is a board-certified appellate practice specialist who has embraced Century Schoolbook for all his writing needs.

Clark Tew is a litigator with Homesley & Wingo Law Group in Mooresville, concentrating his practice on employment and labor law. Despite his firm support for Century fonts, Clark hypocritically writes his personal documents in Iowan Old Style.

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