

Rethinking Legal Writing for an Online Readership

AS MORE COURTS MOVE TO E-FILE and electronic case management systems, it is more likely that judges and clerks will be reading briefs not on paper but on computer screens or tablets such as iPads or e-readers. Should lawyers adjust their legal writing style to account for this shift towards a readership that increasingly uses online resources? The answer is yes.

Research has shown that people read differently on a screen than on paper. Robert DuBose, the author of *Legal Writing for the Rewired Brain: Persuading Readers in a Paperless World*, has addressed this topic a number of times, including recently at the 2016 ABA Midyear Meeting in San Diego in February. DuBose, after surveying the research on this topic (including eye-tracking studies), explained that screen readers often scan for information instead of reading a document word-for-word. Screen readers tend to skim a page, looking for headings and summaries of content. They also read initial paragraphs or topic sentences of paragraphs more thoroughly than the text that follows.

Digital technology gives the legal writer more competition for a reader's attention onscreen. Incoming e-mail notifications may be popping up or beeping, and screen readers may have multiple screens or programs open at the same time. Today's readers also have become accustomed to accessing information quickly. Plugging a few words into a search engine like Google or Westlaw immediately generates answers. Readers so conditioned may similarly expect a legal brief to provide the information they need quickly and easily.

The hallmarks of an effective brief do not depend on whether it is read on screen or on paper. Many stylistic techniques that make a brief more persuasive to a screen reader are similar to those that have been recommended for decades to lawyers writing to a nonscreen readership. The most significant difference may be that lawyers writing to a screen reader need to use extra rigor in making their briefs readable. There are various ways to achieve this.

Include a table of contents. Both screen and nonscreen readers benefit from a visual roadmap to a legal document. Lawyers may omit a table of contents if it is not required by the court's rules. This is a missed opportunity to guide the reader through your arguments.

Put concise summaries up front. Because screen readers tend to read the beginning of a document or section more thoroughly than the end, an important point may be lost if buried within the brief. It is helpful to provide the reader a short summary at the beginning of the document and in each argument section. The summary should include a roadmap of the argument and a preview of the best details to support it.

Use frequent headings. Strong headings and subheadings help guide the reader through the arguments. Frequent use of headings also prevents the reader from becoming lost in text when reading on a tablet with a smaller screen.

Craft effective topic sentences. Clear and useful topic sentences summarizing the paragraph that follows help a screen reader scan a document to gather information quickly.

Pay attention to readability. Simple, clear, and well-structured writing, while always important, is even more so when writing for a screen readership. Keep paragraphs short and sentences simple. When appropriate, break down complex information into easily digestible bullets or numbered lists. Avoid repetition and unnecessary words to diminish skimming by screen readers.

Keep document design simple. Do not distract the reader with

Simple, clear, well-structured writing, while always important, is even more so when writing for a screen readership

unexpected formatting or fonts. A simple document allows readers to focus their limited time with the document on its substance.

Avoid footnotes. While lawyers have long debated the proper placement and usage of footnotes in legal writing, a consensus is emerging that footnotes and screen-reading do not mix. When a nonscreen reader encounters a footnote reference, he or she can stop reading and glance at the bottom of the printed page for the text of the referenced footnote—whether or not it is in the writer's interest to make the reader do so. This is more challenging when reading on a computer screen or tablet. To see the footnote, the reader may need to scroll down or enlarge the page. This extra step creates a risk the reader will miss the footnote entirely.

Use bookmarked headings. Bookmarks allow a reader using a PDF viewer such as Adobe Acrobat to move directly to a specific heading in a brief by clicking on the heading in the table of contents or a navigation pane.

Include hyperlinks. For an electronically submitted brief, consider providing the court with hyperlinks to outside sources such as cases, statutes, or other pleadings or evidence in the court file. Consult the particular court's rules for doing so. The easier a court can confirm that the argument is supported by the cited sources, the more effective the brief can be. The flipside of this, of course, is that if a judge can click on a citation and see it in seconds, it had better be on point.

Using these techniques can help attorneys make their briefs more effective and useful to a screen-reading court. But it is important to remember that whether the court reads on paper or on screen, the goal of a brief is to communicate the client's position and persuade the court. To do this, a brief must be well-organized, readable, concise, interesting, and, above all, accurate. ■

Katharine J. Galston is an appellate lawyer who practices in Los Angeles.