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# **Legal Writing for the Rewired Brain: Persuading Readers in a Digital World**

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## **I. Introduction: reading is changing.**

Something big is happening. Our brains are being rewired.

Computers bring us more information, faster. But researchers have discovered that reading from computer screens changes the way we read. It increases the demands for our attention. It causes us to skim instead of reading line by line. It reduces our concentration and focus. And the more we read on computer screens, the more difficult it becomes to read long texts on paper.

Consider how popular media has changed. Webpage text, which is designed for screen readers, looks very different from the text you saw in books and newspapers from 20 years ago. Screen readers prefer something different. Paragraphs are shorter. Headings are frequent. Structure is more visible. Text is often supplemented by visuals, such as photos and charts.

This change in reading habits is a particular concern to lawyers, who must convey complex information – often to judges and law clerks with little knowledge of the particular subject.

Although reading has changed, legal writing largely has not. Most lawyers write in a tradition-bound style that evolved to meet the needs of paper readers, not screen readers. Most law schools still teach that style – long text, long paragraphs, and complex, lengthy development of arguments.

If lawyers want to communicate to the rewired reader, they are going to have to re-think legal writing. This paper argues that the best place to start is lessons learned from research by website designers.

## **II. The legal world is going paperless.**

The environment in which lawyers read and work has changed dramatically in the last 20 years. Consider the differences between legal offices 20 years ago versus legal offices of today.

### **A. 25 years ago, almost all reading was from paper.**

In the late 1980s, few lawyers or judges used computers at their desks. Lawyers communicated by phone and letters. They drafted by hand, or more often, dictation. They read everything – letters, contracts, legal research – on paper or in books.

Many law offices had computers. But they were primarily tools used by staff for word processing and accounting. They were not tools that lawyers used much for information gathering and communication. Even when many firms began to use proprietary databases like Lexis and Westlaw in the late 1980s, most lawyers did not gather information on the Internet until the mid-1990s.

Until recently, lawyers did very little reading onscreen. Documents were kept in paper files. And lawyers read them on paper.

## **B. Today: the transition to the paperless office and chambers.**

Today computers are an integral part of our office for communication, research, and record management. But are lawyers, clients, and judges using computers much to *read*? Or do they gather information on computers, but print and read it on paper? I have been asking those questions through informal, unscientific polls for the last three years. This is what I have found:

- **Lawyers.** Roughly 75 percent of the lawyers I have questioned have responded that they now spend more time reading from screens than paper. That number tends to be higher in urban areas and much higher among any lawyers or law students under 30.
- **Business clients.** Most in-house counsel and corporate managers are much more likely to read work documents on a screen than on paper. The reason is that most corporate offices now use electronic document management rather than paper files. Paper is too expensive for an efficient office – less because of printing costs, than because of the costs of managing paper files. A few business clients may print some draft documents for study or editing. But reading hard copies in an office is becoming rare.
- **Courts.** Three years ago, most judges I asked were reading legal documents exclusively on paper. Most courts were still managing their files, and court filings, with paper. Yet over the last several years, most federal and state courts in which I practice have switched to e-filing and electronic file management. In courts that have made the switch, judges are far more likely to access and read documents on a screen rather than paper. A few judges still prefer paper over screens as their primary reading tool. But their number shrinks every year.

This switch from paper reading to screen reading appears to be quite recent. Although PCs were first introduced into offices between 1980 and 2000, during the same period, the use of paper doubled. *Technological Comebacks: Not Dead, Just Resting*, THE ECONOMIST (Oct. 9, 2008), <http://www.economist.com/> (search “The Economist” for “technological comebacks”; then follow hyperlink to “Technological Comebacks: Not Dead, Just Resting”). This happened because printing technology made it cheaper to print, and computers increased the amount of information available to be printed. *Id.*

It is only within the last decade that the paper usage per white-collar American worker has begun to decline. *Technological Comebacks*, *supra*. After decades of working with computers, we are finally becoming accustomed to reading on screens.

## **C. 5 key features of the new working environment are changing the way we read.**

At first, it might not make sense that reading on a screen would be different. The words of a text on a screen and the words on the paper are the same. But “[r]eading a book is not perfectly equivalent to reading a screen, no matter what the text.” ALBERTO MANGUEL, THE LIBRARY AT

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