Putting some product into work-product: corporate lawyers learning from designers

Jay A. Mitchell
Professor of Law
Director, Organizations and Transactions Clinic
Stanford Law School
What’s here
Clients hire corporate lawyers to make useful products. These products are documents, such as contracts and corporate bylaws. Lawyers have good tools for making documents; standard forms and precedents from prior engagements are prime examples. But, corporate lawyers do not seem to use other tools whose employment might contribute to the utility and value of their products. These tools, employed by designers, include a focus on the reader and actual user experience, and an attention to typography, to facilitating communicative effectiveness through careful attention to the presentation of text. This paper reflects work by corporate lawyers trying to learn from designers, their work-product, and their literature, in creating legal documents for clients. The materials considered here are governance documents for nonprofit corporations. This paper notes several themes emerging from the literature study, explains why governance materials are a good vehicle for this work, characterizes typical executions of those materials, describes in detail and provides examples of the documents we developed, and makes a few observations about continuing work in the area. The work here is early-stage. As designers might say, we’re doing ideation and prototyping. But, we do think the work is suggestive of how even modest awareness of design considerations can make our work-product better for our clients.

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Documents as products

Documents as communication projects
Others are in this business, too
But we don’t pay attention
No surprise
A wasted opportunity
What’s out there
Documents as communication projects
Documents produced by corporate lawyers represent interesting communication challenges. Documents carry a lot of substance. They embody commercial relationships, carry out regulatory mandates, frame legal entities, and convey information and advice. They are material expressions of concrete relationships, desires, conclusions, and contexts. Documents serve as catchments for all manner of considerations and reflect and function within legal regimes. They attract reliance and often have a broad footprint and long life. Unlike litigation materials, they tend to be directed not to lawyers but instead are used by executives, directors, investors, lenders, customers, suppliers, employees, auditors, regulators, and consumers in overseeing, financing, operating, and interacting with organizations. There is a lot to get done (or that can get done) in a legal document, and the subject matters are generally important.
Others are in this business, too

Lawyers are not the only professionals facing complex communication tasks. Consider the designer charged with creating a wayfinding system for a major airport, a subway system, a college campus, or a historical district, or a technical writer developing an instruction guide for a complex manufacturing process. Consider a healthcare provider who asks patients to provide advance directives about end-of-life care, or a cartographer creating a map. These folks create extraordinarily important functional pieces for diverse users, and as with lawyers, inefficiencies, frustrations, errors, and other bad things can happen if they fail.
But we don’t pay attention
Curiously, we corporate lawyers don’t seem interested in how other professionals go about communication tasks. We don’t study how they approach a problem. We don’t look at examples of great communication executions from other contexts. We give little attention to the professional and academic literatures relating to document design and technical communication. Both practitioners and scholars seem to pay minimal attention to the object itself, to its design and form. Our work-product rarely reflects meaningful deviation from traditional forms, or apparent attention to comprehension and use realities, or even attention to basic typographical principles. We don’t really think about our work as a set of information or product design problems. For us, “contract design” means substance, not its concrete expression.
No surprise
This is not surprising. There are lots of good reasons to stick with what one has always done. The scholarly literature explains the benefits of standardization in documents. Use of standard forms reduces costs and enables a party to obtain the benefit of network and learning externalities, and of greater certainty of enforcement. A party avoids questions, and maybe suspicion, if it uses familiar documents. Traditional (if not necessarily optimal) forms persist because the form itself—as a social artifact—is symbolic of legitimacy and legality. The document just looks and feels legal. If contract terms are sticky, and, as scholars have demonstrated, law firms are not particularly productive sources of substantive design innovation, it seems pretty difficult to imagine firms paying much attention to document design innovation.

Standardization has a long tradition in transactional legal practice. . . . Rather than writing from scratch, lawyers typically reuse contract provisions from previous transactions. . . . [T]hey store and retrieve documents from past deals and follow procedures for standardizing best practices for different types of transactions. By serving large numbers of clients, a law firm may realize scale economies from using the same or similar “best practice” contract provisions across different transactions. . . . Standardized contract terms are enormous cost savers. . . . Standard contract terms are often sticky or locked-in practices. A party who departs from contract standards loses the benefits of network and learning externalities. For example, deal partners are generally suspicious of and expend additional resources to understand novel terms. They also discount the value of a contract that includes unfamiliar contract terms or language. Moreover, a standard term is more likely to have been interpreted by a court, so the prospective enforcement of that provision is more certain and less costly. Many contracts are more valuable if they can be readily assigned or traded to third parties. The greater certainty of enforcement and familiarity of standard provisions [support such transferability].

George Triantis (177)

[explaining stickiness of contract language]: Many complementary factors point in a single direction; the lack of investment in R&D, herd behavior, and the culture of not giving (or taking) credit for innovation or background research if not immediately billable to a client, the separation between litigation and transactional practice, and the residual embarrassment of having to explain contract revisions in new contracts to clients who are bound by the older, risky language, all impel lawyers to resist revising standardized language.

Mitu Gulati & Robert E. Scott (151)
A wasted opportunity
But it does seem like a wasted opportunity. For one thing, simply thinking about alternative presentations seems to improve thinking about substance, and we lawyers should care about that. Our work-product and communications do not have good reputations as models of usefulness. Clients often need summaries, annotations, checklists and other tools explaining, in accessible ways, the content and practical implications of the document. As Triantis explains, lawyers (or at least law firm lawyers) don’t tend to think much about the fact that folks actually have to live with the document. This certainly seems an odd perspective for a client-service business. Doesn’t it seem like we lawyers might want to think about whether our (expensive) outputs are optimally designed for the customer? Shouldn’t we want to explore techniques that might result in a better client experience? Doesn’t it seem puzzling that we don’t use all the available tools when we create the written works at the core of our trade? Might we want to think a bit harder about our work-product as a product?

[The process of making a visual representation] often leads to new insights into your work; when you make decisions about how to depict your data and underlying concepts, you must often clarify your basic assumptions.
Felice C. Frankel & Angela H. DePace (3)

Efficiencies in the midstream of the contract lifecycle are often neglected by both lawyers and their clients. . . . the legal language of contract documents must be translated into operationally meaningful terms, so that the lay employees of the parties can understand and perform their company’s obligations accurately and in a timely manner. . . . [such steps] reduce the risk of inadvertent breach and thereby lower expected dispute resolution and enforcement costs. . .
George Triantis (10)

Contracts do not make things happen—people do. People need to follow their contracts. Contracts are seldom easy for their users in the field, mostly non-lawyers, to understand and to implement. Their language and complexity may overload readers’ cognitive abilities. If this happens and contract implementation fails, it would be wrong to assert that those contracts are “perfect,” or even of reasonable quality, fit for their purpose. Quite the opposite: even if they are legal masterpieces, they fall short of their ultimate purpose.
Helena Haapio (64-65)
What’s out there
Some lawyers are thinking about documents as functional objects, about ways to approach the job and to make better objects. For example, a 2013 book about “law as engineering” characterizes our work as making “useful devices” for clients. There are several books and articles in the legal writing literature about typography and legal documents. There is work, largely in Europe, that brings information design, user experience, and other research to bear in exploring the use of visuals and other non-textual devices in contract documents, with the focus precisely on organizational understanding and other midstream challenges. Lawyers trained in design are developing human-centered design approaches to legal practice and products. There is emerging work in computational law involving automated document creation and use of visualization techniques. And, outside the legal community, there is a huge body of practice and literature relating to various dimensions of design including information, document, and wayfinding design, and typography. One need only read a book by a typographer or flip through an information graphics collection to feel both dismayed by our lack of imagination and inspired by the opportunity to do better.

Lawyers and typography
MATTHEW BUTTERICK, TYPOGRAPHY FOR LAWYERS (2010).

Contract visualization
Helena Haapio, Contract Clarity and Usability through Visualization, KNOWLEDGE VISUALIZATION CURRENTS: FROM TEXT TO ART TO CULTURE 63 (Francis T. Marchese and Ebad Banissi, eds. 2013)

Design and law
Margaret Hagen, http://www.margarethagan.com/

Computational law

Legal writing
WAYNE SCHIESS, PREPARING LEGAL DOCUMENTS NONLAWYERS CAN READ AND UNDERSTAND (2008)

Typography
ELLEN LUPTON, THINKING WITH TYPE (2010)

Document design
KAREN A. SCHRIVER, DYNAMICS IN DOCUMENT DESIGN (1997).

Information design
JOEL KATZ, DESIGNING INFORMATION: HUMAN FACTORS AND COMMON SENSE IN INFORMATION DESIGN (2012)

Forms design

A selection of sources appears at the end of this paper.
Looking at picture books

No news here
People actually have to do these things
It’s not just about making it pretty
It’s not just about font, either
We’re responsible if the client gets lost
No news here

It’s fun to read design books. The information graphics collections are full of unbelievably cool, wish-I-could-do-that work. There’s also much in the design literature that is familiar to a lawyer, and that might prompt the cynical among us to wonder what’s the big deal about “design thinking.” After all, we legal grinders study businesses closely, try out different characterizations of situations, imagine the future (known as “anticipating future contingencies and states of the world”), sketch diagrams, reduce abstract to concrete, toss out ideas, identify needed actions in needed order, go through multiple drafts, spend hours polishing work-product, and create deliverables for clients to read, use, and distribute. This design stuff seems like a pretty good description of what happens when we structure a transaction or shape a decision-making process or create a prospectus. We may not use words like “inspiration” and “ideation,” or put Post-it® sticky notes all over the place, but isn’t this what we do? Lawyers and designers seem to share a fundamental orientation and approach to their work.

As a style of thinking, design thinking is generally considered the ability to combine empathy for the context of a problem, creativity in the generation of insights and solutions, and rationality to analyze and fit solutions to the context.


Law and design are not often brought in conversation with each other. This is a loss to both fields. Superficially, design and law could not be more different. Law is text-heavy and often quite abstract. Design emphasizes visualization, sketching ideas out, and emphasizing the human elements of any situation. Law often is confusing for non-initiates (and sometimes legal professionals) to navigate. It has a reputation for being adversarial, with zero-sum attitudes, and strong hierarchy. Design is less formal, more participatory, and collaborative. But design and law share a fundamental purpose—to shape how humans act and interact with each other. They are both oriented (at least in the idea) towards problem-solving, serving clients, and building better ways of life.

MARGARET HAGEN, www.openlawlab.com/approach-process/

As a designer, you have to think in time and see things in sequence. You have to see information as a narrative form.

KIM BAER, INFORMATION DESIGN WORKBOOK (204, quoting Paul Mijksenar)

Law is neither an art nor a science. It is a craft. . . . One of the most prized skills of the craftsperson is the ability to design, visualize, and compose.

BRETT SCHARFFS (2247, 2296)
People actually have to do these things

On the other hand, a central message of the literature is the fundamental importance of listening, of watching, of understanding and valuing individual needs and experiences, of creating something that works for the user. Lawyers hear all of the time about (and emphasize to new lawyers) the importance of learning the business, and those of us with clinical experience talk and write about client-centered lawyering. But, it’s pretty hard to claim that the typical corporate lawyer preparing documents for a client approaches the task with the empathy, the close and sustained observation, the commitment to actual user experience and product functionality contemplated by the design discipline, much less the openness to new ideas or novel executions.

We have our time-tested, marketplace-familiar, low-cost legal forms. Attending to practical, on-the-ground implementation by regular people, making life easier for the individuals at the organization, departing from the firm’s standard document . . . that’s not how it typically goes.

Effective information design . . . helps people navigate and understand the increasingly complex world of facts, figures, directions, and demands. It helps people finish a task, solve a problem, or meet a need. It minimizes or eliminates frustrations. It begins with understanding the people who will use the content and making sure the content and its presentation and delivery will serve them.

RONNIE LIPTON (intro)

Successful wayfinding designs depends on understanding three variables: the nature of the client organization, the people with whom the organization communicates, and the type of environment in which the system will be installed.

DAVID GIBSON (18)

As it stands, in most cases documents are designed from a very egocentric perspective where the writer takes centre stage, functioning in a rather authoritarian manner within a top-down design process. Audience analysis wants to do exactly the opposite: make the design process less authoritarian by . . . taking a bottom-up approach.

LEON DE STADLER & SARAH VAN DER LAND (64)

It is easier to talk than to listen. Pay attention to your clients, your users, your readers, and your friends. Your design will get better as you listen to other people.

ELLEN LUPTON (219)
It’s not just about making it pretty
Another message that comes through, and one that may surprise lawyers, is that design is not about aesthetics. It is about functionality and effectiveness. As such, content is front and center. Designers have to make decisions about what data to present (and not present), as well as decisions about how most effectively to present it. For lawyers doing governance and other documents, this is a challenge. We tend to put a lot of stuff in documents. Framing these choices in terms of practical value to the user (versus, or at least in addition to, covering every base) is an interesting idea. Wayfinding is a useful way of thinking about it.

Determining the appropriate content for the communication of information requires a rigorous process of examination: Is it true? Is it relevant? Is it necessary? Does its inclusion add or detract? Is it in a form that its audience can understand?

JOEL KATZ (19)
It’s not just about font, either
Similarly, the literature makes clear that typography is about function, not art. It’s about reinforcing the message and helping the reader. As Butterick says, “[b]ecause our writing matters, our typography matters.” He continues: “typography in legal documents should be held to the same standards as any professionally published material. Why? Because legal documents are professionally published material.”
These are rather compelling and commonsensical assertions. It certainly seems like we should learn about tools that will help us improve communicative effectiveness and reduce the demands on our clients. Hard-to-use documents consumes management time and create inefficiencies; maybe reducing reading costs is a way of reducing the all-in cost of legal services.

. . . Typography is visual, so it’s easy to conclude that it’s primarily an artistic or aesthetic pursuit. Not so. Typography is primarily utilitarian. . . . Good typography is measured on a utilitarian yardstick. . . . [t] is measured by how well it reinforces the goals of the text . . .
MATTHEW BUTTERICK (29)

[The] visual form of a document should be no more arbitrary than the words in a text because both contribute to the message the document is intended to express. Documents thus communicate with readers through their design as well as through their words. . .
ELLEN BRUMBERGER (15)

Typography is for the benefit of the reader, not the writer. . . . Typography matters because it helps conserve the most valuable resources you have as a writer—reader attention. . . . Many legal writers adopt a riskier model of reader attention. Instead of treating reader attention as precious, they treat it as an unlimited resource. . . . What could be more presumptuous? Or dangerous?
MATTHEW BUTTERICK (21)
We’re responsible if the client gets lost
A final theme, and one reinforced in Howarth’s book about law as engineering, is that designers should take responsibility for the functionality of the objects they produce. If a visitor gets lost in the airport or at the medical center, the designer of the signage system should be troubled. Lawyers certainly worry about content responsibility, but we may not worry so much about our visitors getting lost midstream. So, how might we be able to learn from the designers in helping our clients better find their way?

Since people rely on documents to make decisions that influence their safety, livelihood, health, and education, the highest ethical standards must be brought to bear in making textual choices—in deciding what to say and what not to say, in what to picture and what not to picture. Taking responsibility for these choices is central to the practice of document design.

Karen A. Schriver (11)

The craftsmanship of a lawyer or judge can never be separated from the effects of her craft.

Brett Scharffs (2277)
Governance documents

Why nonprofit governance documents
What we find in the field
What we see in the documents
Defining the problem
Some broader principles
What about the legal stuff?
Some practical considerations
Why nonprofit governance documents

Let’s use nonprofit governance documents as the vehicle for exploring this question. Such documents are good subjects. They are unarguably “legal;” they set out a corporation’s governance arrangements, and they support compliance activities. To those ends, these documents reflect statutory requirements, regulatory mandates, and organizational choices and culture. They are undergirded by a well-developed set of default rules (in the corporation statute) and operate in an environment of meaningful organizational conduct regulation (under the tax law). They are unilateral in nature; there is no other party who must agree to a non-traditional execution. Like contracts, they involve midstream management. Organizations need to understand and follow the rules set out in the documents. As a practical matter, these materials are unlikely to be the subject of litigation and interpretation by a court, and yet must be operatively and recognizably legal given their function and their visibility to regulators, funders, and the like. Nonprofit governance documents are form-based. Law firms use the same standard documents over and over, and there are multiple reputable public sources of comprehensive forms. They are institutional documents, not the sort of consumer materials where regulators have engaged focus groups and graphic designers to develop new executions (and where the “mandated disclosure” literature has documented endless failings). They are corporate documents, not the litigation materials that are the principal subject of the “typography for lawyers” writing. Finally, the context dovetails nicely with scholarly observations about legal document experiment and innovation by users, nonprofit associations, and academics.
What we find in the field
Governance documents include bylaws, board committee charters, board resolutions, and conflict of interest, whistleblower, compensation review, and other policies. They often include additional documents, such as annual conflicts disclosure questionnaires, descriptions of board member duties, and board self-assessment questionnaires. These materials may be assembled in a “board orientation handbook” given to new directors. Organizations also adopt governance policies and practices (sometimes written, often not), such as those relating to management compensation review, board composition goals, and board review of the Form 990 document, the (public) report tax-exempt organizations make each year with the Internal Revenue Service. Governance arrangements are visible. Form 990 includes multiple questions about governance practices and policies, and about public access to core governance and financial materials. The IRS and funders pay attention to nonprofit governance, as do third party raters such as Charity Navigator. In response, law firms, state bar committees, consulting firms, and other sources have made available a variety of comprehensive, deeply-researched, and carefully-prepared model documents, and the IRS publishes guidance and commentary. In developing these documents, nonprofits draw on these sources, have documents prepared by pro bono counsel or the lawyer on the board, or adopt a DIY approach with materials obtained from friends or plucked off the internet. Once in place, these materials, like other legal documents, seem to grow over time; more things are added, and the documents are rarely pruned or harmonized across the set.
These are excerpts from the bylaws, conflict of interest policy, and audit committee charter of a major California charitable organization.
What we see in the documents

These excerpts are fairly representative of traditional executions. By-laws are often lengthy and may have a table of contents. They may recite statutory text and legal requirements relating to nonprofit status. They may articulate the mission of the organization. They often set out board composition aspirations, director conduct expectations, and specific responsibilities for each board committee. The bylaws and conflict of interest policy may address different aspects of the same concern: statutory director self-dealing here, other related party concerns there. All these bylaws, charters, and policies tend to look the same: Times New Roman font; centered title and headings; narrow margins and resulting lengthy lines; Roman numerals; sometimes full justification; sometimes definitions; dense text; and often all caps, bold, underlining and italic emphases in the same document (sometimes even in the same section heading or word). It can be hard to tell one document from the next. The document package generated by the firm is more or the less the same for every client, big or small. Advice about director fiduciary duties, matters requiring formal board approvals, and the like are presented in a memo from the firm.
Defining the problem
Governance materials are important legal documents. They typically read and look like what one expects of a legal document, and what one expects of a document prepared by a cover-every-base lawyer. That all said, and especially for nonprofits, these materials can also be viewed as a user's guide, an instruction manual, a set of directions for specified operations. They set out procedures for managing a legal entity subject to special behavioral requirements relating to its nonprofit and tax-exempt status. Governance materials also serve as educational tools; most users are novices (and volunteers to boot) and often learn about tax and governance rules through use of the documents. In that sense, they might be viewed as a form of mandated disclosure; this is information that you, board member, need to know, and these are rules that you need to follow. The materials are used by an extraordinary variety of organizations, some grassroots and others with billions in assets. That means the readership is widely varied; users may be lawyers, social workers, PhDs, or clients of the charity. And, access to legal support varies widely as well. If that’s the case—if these documents are not only “legal” documents but also educational, operational, and disclosure materials used by a diverse and often novice readership—then it seems logical to think about their design from that point of view. That is, have we been defining the problem correctly? Have we really thought about how these products are encountered and used in the real world? And, with that understanding, what might we do to improve functionality and reduce reading costs?
Some broader principles
As we set out in this inquiry, we might identify some general principles based on client observations, research about reader experience, and our own common sense. Most fundamentally, from a user point of view, shorter documents are better than longer documents. So, let’s try to cut everything we can comfortably cut. Since these are educational materials, it would be good to take advantage of them as tools for teaching and periodic refreshment and reinforcement. We should think hard about where to capture what; clients often note that they struggle with how and where to document policy decisions. We get recurring questions from clients and see the same confusions in their documents; maybe we can anticipate and address those questions. We might also think about materials that can serve as useful discussion platforms; imagine an executive director and board chair sitting down to plan a series of board meetings or orient a new director. Knowing easily which documents cover what topic would be helpful, as would addressing related subjects in one rather than multiple documents. We might try to segregate highly technical information from core content to the extent we can. Plain language is a given: short paragraphs, short sentences, and simple language are all good. And, if we can do anything else to make the materials easier to recognize, navigate, and read, let’s do it.

Would you rather have your audience read all of less or none of more?
JOEL KATZ (79)
What about the legal stuff?
We certainly can’t lose sight of the legal nature of these materials. We need to make sure we take care of the basics. But, we might be able to do more than that. For example, what can we do to reduce the risk of inadvertent noncompliance? (It’s not uncommon to find that actual practice varies from provisions set out in the documents.) Are there steps we can take to reduce maintenance costs, such as need for frequent bylaw changes and the resulting, and often observed, practical difficulty of keeping track of serial amendments? Can we do something to reflect efficiently best practice principles, tax safe-harbors, Form 990 definitions, and IRS commentary about desirable governance practices? Thinking about white space doesn’t mean we ignore trying to cover lots of ground. Presumably, enhancing the efficiency and educational effectiveness of the materials would contribute to both better substantive compliance and to establishment of a better record and audit trail. And, at the same time, we need to follow the wise counsel of a group of California lawyers who prepared and published a set of comprehensive model governance policies; they emphasized the importance of an organization adopting only policies they can actually implement.
Some practical considerations
Finally, we need to take into account that neither these documents nor the underlying law are static. Organizations refine their governance practices and the statutes change now and then. We can’t get too fancy with the formatting; the documents need to be easy to change. A website-only, no-paper approach would allow all kinds of substantive and presentation functionality, but that’s not likely to fly any time soon in the nonprofit environment. Organizations often make changes in their documents without the help of graphic designers and their software or even their lawyers. That means that we better stay text-focused and use Microsoft Word. We also can’t get too carried away with novel designs. The documents need to do the necessary legal work, and they need to be immediately recognizable as legal documents. After all, directors, funders, auditors, and especially regulators will bring expectations to the table when they review these materials. (Bylaws are social artifacts, too.) The document design theorists would say that we are identifying purpose and non-purpose constraints on the design space.

[C]omponents of purpose descriptions are seen as restrictions on the set of design options for a given document. This set is referred to as the design space. The design space contains all the options that are initially open regarding the content, structure, style, and visuals to be used in a given document. It is subsequently restricted by purpose constraints (that is, constraints stemming from the purposes of the document) and non-purpose constraints.... Often the most critical questions in document design concern the consequences of combining different purposes and different audiences in the same document, and of combining purpose-related considerations with other considerations like financial and legal ones.

LEO LENTZ & HENK PANDER MAAT (392)

From a famous interview with Charles Eames:
Q: What is your definition of design?
A: A plan for arranging elements in such a way as to best accomplish a particular purpose.

Q: What are the boundaries of design?
A: What are the boundaries of problems?

Q: Does the creation of design admit constraint?
A: Design depends largely on constraints.

Q: What constraints?
A: The sum of all constraints. Here is one of the few effective keys to the design problem: the ability of the designer to recognize as many of the constraints as possible (and) his willingness and enthusiasm for working within these constraints—the constraints of price, size, strength, balance, surface, time, etc.; each problem has its own peculiar list.
Things we might change

- Content changes in bylaws
- Content changes in committee charters
- Content changes in policies
- Content changes in other documents
- Form and organization
- Typographical choices
Content changes in bylaws
These considerations suggest some approaches to bylaw content choices. At a general level, to reduce length, the risk of inadvertent noncompliance, and the need for frequent amendment, let’s not approach them from the point of view of encyclopedic comprehensiveness but instead try to make the bylaws more general and “constitutional” in nature. Perhaps we should focus on board composition and meeting mechanics, committee creation, officers, indemnification, and contract execution, and not much more beyond that. We can comfortably cut recitations of statutory provisions and tax-compliance requirements. This language seems boilerplate in nature, and if the idea is to educate and guide conduct, burial in the bylaws seems an odd way to cover these topics. Besides, if the statute changes, then the document is immediately out of date. We should drop those provisions and find another and better vehicle for education and for documenting awareness of the rules. To ease navigation and reduce the need for making and keeping track of bylaw amendments, let’s provide only a framework for board committees in the bylaws. We should drop the recitation of the self-dealing statute in favor of addressing that topic, as well as other conflict of interest matters, in a standalone conflicts policy. With these sorts of changes, the document can be seven or eight pages in length.
Content changes in committee charters

Board committee charter design is based on two simple ideas: (1) each committee should have its own document, and (2) each document should be one page in length. Charters are standard practice for public companies and make good practical sense. They are targeted, accessible, and easy to change. Charters should cover a set of common topics (for example, composition, operations, and responsibilities) in a standard way. They would make clear whether the committee is a true board committee or an advisory committee, a distinction in California that’s often confusing to clients. Responsibility descriptions would begin with appropriate “board role” verbs (oversee, monitor, review) and be written as crisply as possible. Charters might include a note summarizing the statutory limitations on committee action; if this obscure topic is dealt with at all, it seems more efficient to present it in the operative document—the one actually used by the committee—rather than buried in the bylaws. This way, it’s more visible to the user, and it’s easier to change if the statute changes (which in fact it did in California several years ago).
Content changes in policies

Core governance policies include conflict of interest, whistleblower, compensation review, and document retention policies. It seems fair to assume greater uptake if the covered population understands the reasons underlying the policy. For that reason, each policy might begin with text stating the purpose and legal background of the policy. The conflicts policy would cover the field; it would address not only general conflicts matters but also the director self-dealing statute often treated in the bylaws. It would set out step-by-step procedural and documentation requirements (in line with its nature as a user’s guide) and might cover related topics such as use by directors of the organization’s name. At the same time, we’d do our best within the limited space to build a case that the policy reflects the relevant Form 990 definition and IRS commentary about the topic. From a coverage and efficiency point of view, it may make sense to design the annual conflicts questionnaire to include a one-page set of specific, policy-driven prompts rather than a general question followed by blank space. That way, the document not only might generate fuller responses but also be more effective as a diligence document for compliance and disclosure purposes. We’d follow the same approach for the other policies (background, coverage, rule, procedure) and try to get all of them done in a page or, at most, two pages and change.

Learning and transfer are facilitated by more general instructions and goal descriptions, in part because the force the learner to try to understand the system or domain and engage in effortful cognitive strategies conducive to learning.

ELS ERIKSDOTTIR & RICHARD CATRAMBONE (768)

[990 definition]: A policy that defines conflict of interest, identifies the classes of individuals within the organization covered by the policy, facilitates disclosure of information that can help identify conflicts of interest, and specifies procedures to be followed in managing conflicts of interest.


[IRS commentary]: The Internal Revenue Service encourages charities to adopt a written policy establishing standards for document integrity, retention, and destruction. The document retention policy should include guidelines for handling electronic files. The policy should cover backup procedures, archiving of documents, and regular check-ups of the reliability of the system.

Content changes in other documents
As with the conflicts questionnaire, a board self-assessment tool might include multiple prompts, grouped in logical categories. Instead of memos and “job descriptions” relating to director duties, perhaps that topic should be captured in a single document that touches on fiduciary duties, expectations of individual directors, and meeting practices such as agenda development and distribution of advance materials. Indeed, this document could be expanded (a little) to include board composition goals and nomination process, nutshell summaries of each committee and each governance policy, and brief statements regarding other matters such as tax compliance principles, fundraising principles, or board review of the Form 990. The document could also cover topics of particular concern to specific organizations—director engagement in political activities, for example. Such a document—a governance guidelines piece somewhat similar to that required of public companies—could serve as an efficient orientation tool for directors and external readers such as funders or auditors, a vehicle for capturing additional governance-related topics for which separate documents would be too much, and an internal basis for external assertions in the Form 990 and financial statements. And, it could be a tool for educating organizational actors about IRS expectations and governance best practices, and create a record of those practices. In short, the idea is to create a practical, accessible, multi-purpose, and easy-to-update tool that gets a lot of legal and board development work done for the client.

Prior to adoption of a formal policy, the organization should determine where the policy should be placed in the organization’s documentation. Alternatives may include, for example, in the bylaws, in a board policies and procedures manual, or as a stand-alone item.


The board should establish an effective, systematic process for educating and communicating with board members to ensure that they are aware of their legal and ethical responsibilities, are knowledgeable about the programs and activities of the organization, and can carry out their oversight functions effectively.
Independent Sector, https://www.independentsector.org/board_education_communication_principle_15
Form and organization
It’s not helpful for the bylaws, charters, policies, and other documents to more or less look the same. Why force the reader to figure out what’s what? Instead, each type of document could have its own format, and the nature of each category of document could be immediately apparent. The bylaws, for example, might follow a traditional, one-column format with separate articles. The committee charters could be set up in two columns, with the core responsibilities section having its own easy-to-see column, and the charters could have lots of white space. (For one thing, directors might feel better about taking on committee responsibilities if the duties are stated concisely and the document has a fairly spare appearance.) Policies might feature a term sheet format, with section captions set out on the left and text on the right. Other documents would vary as appropriate; we can try to choose a format that facilitates practical use. For example, rather than a dry memo setting out topics and housekeeping items a board should address, how about a one-page “annual board calendar” that identifies those topics and gives directors and management high-level visibility into the year? How about a table setting out voting requirements for particular items, including the occasional subtleties like “majority” versus “majority in office?” In all cases (and as inspired by Schwe-singer’s book about forms), we’d plainly and in large font state the name of the document in the top left corner. We’d also make sure that the documents would still be recognizable as legal documents, and the formatting would be such that a client could easily manage future changes.

Just as the text in writing is subject to rules, techniques, and rhetorical decisions, so is page design. The look of a page, the visual grammar, requires the same types of rhetorical, writerly decisions that the writer makes when producing, revising, and polishing writing.

Jonathan Bush & Leah Zuidema (87)

Typography is not only verbal information but also lines of texture within a composition. These textures create rectangles of tone on the page, and the relationship of the positions of these rectangles is critical to the perception of order and unity within a composition. The duality of the two roles gives the designer responsibility for both communication and composition.

Kimberly Elam (intro)

Designers provide ways into—and out of—the flood of words by breaking up text into pieces and offering shortcuts and alternative routes through masses of information. From a simple indent (signaling the entrance to a new idea) to a highlighted link (announcing a jump to another section), typography helps readers navigate the flow of content. The user could be searching for a specific piece of data or struggling to quickly process a volume of content in order to extract elements for immediate use. Although many books define the purpose of typography as enhancing the readability of the written word, one of design’s most humane functions is, in actuality, to help readers avoid reading.

Ellen Upton (87)
Typographical choices

We should do our best as amateur typographers. We should try to make use of grids and white space, and to think about hierarchy and navigability. We should follow guidelines about line length; no more lines that run on and on (think traditional legal documents vs. magazines). We shouldn’t fully justify text but instead go flush left and ragged right. We shouldn’t center headings, use all caps, use Roman numerals, or use bold, underlining, and italic all in the same document. We should vary font size and have a good debate about font choice. If we need a table of contents someplace, we should put the page numbers close to the words, rather than clear across the page. We should try hard to use a consistent style throughout the document package.

In typography, margins must do three things. They must lock the textblock to the page... through the force of their proportions. Second, they must frame the textblock in a manner that suits its design. Third, they must protect the textblock, making it easy for the reader to see and convenient to handle. (That is, they must leave room for the reader’s thumbs.)

ROBERT BRINGHURST (165)

This long [line] reappears in other contexts over the centuries—on Roman imperial writing tablets, in medieval European charters and deeds, and in many poorly designed specimens of academic prose. It is a sign, generally speaking that the emphasis is on the writing instead of the reading, ... Whether oral or visual, longwindedness is very rarely a virtue.

ROBERT BRINGHURST (161-162)

Choosing to align in justified, centered, or ragged columns is a fundamental typographic act. Each mode of alignment carries unique formal qualities, cultural associations, and aesthetic risks.

ELLEN LUPTON (112)

Centered text is difficult to read because the eye cannot easily find the beginning of the line.

JOEL KATZ (148)

A word set in ALL CAPS within running text can look big and bulky, and A LONG PASSAGE SET ENTIRELY IN CAPITALS CAN LOOK UTTERLY INSANE.

ELLEN LUPTON (52)

Typeface and font are important to understanding and even shaping meaning.

REBECCA TUSHNET (10)

Lists, such as contents pages and recipes, are opportunities to build architectural structures in which the space between the elements both separates and builds. The two favorite ways of destroying such an opportunity are setting great chasms of space that the eye cannot leap without help from the hand, and setting unenlightening rows of dots (dot leaders, they are called) that force the eye to walk the width of the page like a prisoner being escorted back to his cell.

ROBERT BRINGHURST (35)
1. Name
The name of this corporation is XYZ ("XYZ").

2. Membership
XYZ shall have no members, as defined in Section 509 of the California Nonprofit Public Benefit Corporation Law, as amended (the "Nonprofit Corporation Law"). XYZ may from time to time use the term "member" to refer to persons associated with it, but such persons shall not be members within the meaning of Section 509 of the Nonprofit Corporation Law.

3. Board of Directors

2.1 Powers
Subject to the provisions of the Nonprofit Corporation Law, Articles of Incorporation, and the Bylaws, XYZ’s activities and affairs shall be conducted, and all corporate powers shall be exercised, by or under the direction of the Board of Directors of XYZ (the "Board"). Directors shall have no power as individual directors and shall act only as members of the Board.

3.2 Number of Directors
The number of authorized directors of XYZ shall be not less than __ nor more than __, with the exact number of authorized directors to be fixed by resolution of the Board from time to time.

3.3 Qualification of Directors
No more than fifty percent (50%) of the directors serving on the Board may be interested persons, as defined in Section 509 of the Nonprofit Corporation Law.

3.4 Election and Term of Office
At the annual meeting of the Board, the Board shall elect directors to serve for one-year terms. An in-office director shall hold office until a successor has been elected and qualified.

3.5 Vacancies
A vacancy or vacancies on the Board shall exist in the event that the actual number of directors is less than the authorized number for any reason. In addition, the Board may declare a vacancy in the office of any director who has been declared by a court of competent jurisdiction to be incapacitated by illness or injury. The vacancy shall be filled by the Board of Directors as provided by Article 3 of Chapter 2 of the Nonprofit Corporation Law.

3.6 Resignation
Except as provided below, any director may resign at any time by giving written notice to the Chair, the Executive Director, or the Secretary (as each are defined in Section 8.1). The resignation shall be effective upon receipt of notice or at any later time specified in the notice. Unless otherwise specified in the notice, the resignation need not be accepted to be effective. If a director’s resignation is effective at a later date, the Board may elect a successor to take office as of the date when the resignation.
Whistleblower Policy

Introduction
XYZ Corporation ("XYZ") adopted this Whistleblower Policy (this "Policy") to facilitate open and honest communications concerning its governance, finances and compliance with law, policy and ethical principles. This Policy applies to all directors, officers, employees and volunteers of XYZ (collectively, "XYZ associates").

Policy
Every XYZ associate is encouraged to report under this Policy any concerns about any XYZ activities that he or she believes, in good faith, involve, or appear to involve, violations of law or regulation, these violations include, without limitation, suspected fraud, theft or embezzlement, accounting, internal control or auditing irregularities such as unrecorded transactions or misleading financial reporting, improper financial transactions or use of XYZ assets, kickbacks, improper concealment or destruction of XYZ records, and violations of XYZ’s conflicts of interest policy or law.

Reporting a concern
If at any time an XYZ associate has such a concern, the XYZ associate may report the concern directly by writing with the Executive Director of XYZ. Alternatively, if the associate is not comfortable speaking with the Executive Director, or does not believe the concern has been properly addressed, the XYZ associate may report the concern to the Chair of the Board of Directors or the Chair of the Audit Committee. If the subject of a report involves both Board, the XYZ associate may report such concern to any other Board member.

Confidentiality
XYZ will treat a report of unethical or illegal conduct as confidential, subject to and limited by the need to investigate and prevent or correct the action, and the need to comply with applicable law.

Non-retribution
An XYZ associate making a report will not be discharged, denied benefits, disciplined, harmed or harassed in any manner for making a report.

No impact on employment status
This Policy is not an employment contract and does not modify the employment relationship with XYZ and its employees. It does not change the fact that employees of XYZ are employees at will.

Other laws and policies
This Policy is intended to supplement and not supersede federal and state laws, including, without limitation, Section 1352 of the California Labor Code and Section 1107 of the Sarbanes-Oxley Act, or XYZ policies, including, without limitation, those relating to harassment, discrimination or personnel.

Amendment
The Board may amend this Policy at any time.

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Did you receive any compensation from XYZ for service as an employee, director or officer of XYZ?</td>
<td></td>
</tr>
<tr>
<td>Are you aware of any compensation paid by XYZ to a family member for service as an employee, director or officer of XYZ?</td>
<td></td>
</tr>
<tr>
<td>Did you receive any payments made by XYZ to a family member in an independent contractor?</td>
<td></td>
</tr>
<tr>
<td>Are you aware of any transactions between XYZ and any entity in which you are a director, officer, key employee, general partner, LLC manager or an owner of more than 5% of the equity interests in the entity?</td>
<td></td>
</tr>
<tr>
<td>Are you aware of any transactions between XYZ and any entity in which a family member is a director, officer, key employee, general partner, LLC manager or an owner of more than 10% of the equity interests in the entity?</td>
<td></td>
</tr>
</tbody>
</table>

Conflicts questionnaires
3 pages (with IRS-encouraged detail)
Annual Board Calendar

January-February
- Review XYZ’s risk exposure (including funding and program as well as liquidity risk)
- Review insurance strategies to ensure type and level are adequate for XYZ’s activities and property
- Assess risk of key operating contacts
- Conduct internal financial, legal, and financial reviews
- Review board and executive compensation

March-April
- Review board performance, including board composition, committee, members, and function
- Review board meeting minutes and board effectiveness

May-June
- Review board’s strategic direction
- Review annual financial statements and other financial reports
- Review internal controls with CEO, Treasurer, and Comptroller

Goverance Review (every 2-3 years)
- Review board and executive compensation
- Review board meeting minutes and board effectiveness
- Review board audit and external audit processes

July-August
- Annual Board and Officer Elections
- Review board performance and compensation
- Review board effectiveness

September-October
- Review board and executive compensation
- Review board effectiveness

November-December
- Review board and executive compensation
- Review board effectiveness

Note: This is a suggested calendar and is for discussion purposes only. The Board and Executive Director should decide what is best for XYZ in view of the factors and rhythm of its operations. The calendar is subject to change and should be reviewed annually.

governance guidelines

Introduction
This document provides an overview of XYZ’s governance arrangements and responsibilities. It serves as a reference, as an efficient operational and educational tool, and as a vehicle for clarifying governance policies and practices not otherwise reflected in separate documents. It covers board and individual director responsibilities, board composition, committees, meetings, access to information and staff, orientation, and evaluation; transaction approval; compliance, and financial reporting and disclosures.

Board responsibilities
Under state law, XYZ’s activities and affairs are conducted and all corporate powers are exercised by or under the direction of our Board. The Board’s responsibilities include:
- Appointing XYZ’s officers
- Overseeing strategy development and execution
- Monitoring program performance, outcomes, and impact
- Reviewing budgets and budget performance
- Providing financial oversight, control, and risk management oversight
- Approving major transactions, and determining the compensation of the Executive Director
- Selecting, orienting, and integrating new members of the Board
- Overseeing and reviewing XYZ’s governance structure, policies and procedures
- Reviewing legal compliance
- Ensuring a strong strategy, and engaging in development and capacity building
- Reviewing and approving board and outreach strategies

Individual director expectations
We expect each individual director to fulfill the core board responsibilities outlined by state law and IRC by:
- Understanding XYZ’s strategy and programs
- Attending an understanding of XYZ’s planning and budgeting processes, key performance measures, and financial statements;
Putting Some Product Into Work-Product

What’s next

These are baby steps
If we stepped out a little further
From here (1)
From here (2)
From here (3)
From here (4)
Documents as products
These are baby steps
These are excepts from forms we currently use in the transactional clinic at Stanford Law School. The response is favorable. Clients, both large and small, appreciate the brevity, the organizational scheme and brightness of the documents, and especially the practical tools such as the annual board calendar. Moreover, these early-stage materials reflect only baby steps. For example, we have not engaged in sustained listening sessions with clients, or tried to draw on the psychological research about procedural learning in a sophisticated way, or engaged a graphic designer to help us out. In many respects, we’ve simply presented standard content in a different form. We still have plenty of statutory references in the materials. We follow a traditional bylaws organizational scheme and have yet to optimize how we describe regulation-driven procedures. Some pages are still too crowded, and we struggle with the cover-every-base instinct in keeping documents (especially the governance guidelines) to a workable length and consistent feel. The choice of Arial font probably wouldn’t please the professionals. We worry that, in our effort to create smaller pieces, we’ve created too many pieces. We’ve also barely scratched the surface of typographical improvement. We played, in an amateurish way, with page design, captions, line length, and font, and didn’t really vary from standard Word settings. We didn’t consider picas, points, leading, kerning, line spacing, golden sections, and so on. And yet, the difference (and in our view, improvement) in usability is apparent.
If we stepped out a little further
One can easily imagine much more creative (and probably shorter and more effective) ways to present this information. For example, would bylaws be easier to use if they were set up in a Q&A fashion? Would they benefit from side notes that answer predictable questions, or accompanying graphics that address the confusion often associated with concepts such as “staggered board,” “authorized directors,” and “quorum?” Might a conflict of interest policy be more effective if the policy blends visual elements and text and reflects the decision-making path inherent in those policies? Should we go wild, take inspiration from IKEA, and set all this up in the form of a real user’s guide?

If the notes are permitted to move around in the margins—as they were in Renaissance books—they can be present where needed and at the same time enrich the life of the page. . . . Sidenotes give more life and variety to the page and are the easiest of all to find and read.

*ROBERT BRINGHURST* (68)

In crafting documents that clients understand, we also have the option of taking it one or two steps further, by annotating or even illustrating contracts. . . . This could come in the form of explanations in sidebar comments, footnotes, or in bold brackets within the text. . . .

*JANELLE ORSI* (112-113)

Visual techniques are an efficient method of conveying and organizing information to all types of people. Visual representation acts as an organizer for ideas, improves comprehension, and functions as an aid to memory.

*ANGELA PASSALACQUA* (205)

Reader studies show that the marriage of text and image is one of the most powerful ways to help a reader retain information.

*KIM BAER* (114)

I believe in flow charts. I wish every law class I learned was introduced with one simple overarching flowchart, that would show the essential tasks and questions that legal practitioners must proceed through when operating in this certain domain of law.

*MARGARET HAGEN*,
From here (1)
This early work suggests that there is considerable opportunity in institutional, as well as consumer settings, for attention to design and typography. Governance documents are one example where such attention can be helpful. Contracts are another and especially interesting area for study and experiment. Haapio and colleagues are onto something with their work on non-textual tools. Nonprofits provide an interesting test bed for exploration here. They contract with both the individuals they serve (for example, a resident in a transitional housing facility), and with organizations with whom they collaborate in programmatic activity. They often want a document that’s meaningfully accessible to the other party, and a look and tone of collaboration and practicality, not legal heaviness. It’s no surprise that “MOUs” are predominant in nonprofit collaborative activity. This factual setting provides opportunities both to expand use of tables and other familiar but underused devices, and, with the client’s buy-in, to try out non-textual tools, novel formats, and other non-traditional approaches. (In our experience, clients generally welcome more user-aware, operations-oriented executions.) Midstream management tools such as summaries and calendars, and of course client communications and advice and training materials for clients of all kinds, are prime targets for design innovation—and sources of ideas for changes in the underlying contracts and other documents themselves. On the litigation side, as Butterick and others have shown, pleadings and briefs benefit materially from typographical improvement. There’s no expectation that tomorrow we’ll wake up to a world of spare and elegant bond indentures, but corporate lawyers with an awareness of design considerations could certainly take advantage.

Contract visualization—adding tables, charts, and images to supplement text—offers promising new ways to communicate contracts and improve their clarity and usability. Our recent research shows how simple changes can make major improvements and how flowcharts and other non-textual tools can add value and improve productivity and efficiency in the corporate contracting process. Proactive law, merged with user-centered information design and visualization, can increase the understandability and usability of contracts across cultures and disciplines.

Putting Some Product Into Work-Product

From here (2)
The outlook for legal document design innovation is encouraging. Interesting things are happening out there. There’s terrific work underway by Hagen (see sidenote), Hewens (from IDEO), and Haapio (contract visualization). Online legal service providers such as Rocket Lawyer, Legal Zoom, and Boarddocs.com presumably have both the incentive to invest in document design innovation (consistency with mission and business model, competitive differentiation) and the platform for widespread dissemination. Computational law innovators such as Kiiac might have an opportunity to blend automated, modular content with thoughtful design. Bar, trade association, continuing education, and other organizations who make templates publicly available, and who have great credibility and reach, might be engaged in making the R&D investments needed to create, in Hagen’s term, replicable “patterns” for new executions of legal materials.

At this young stage of legal design, the best thing to offer lawyers who want to offer better, excellent products to their clients is a guidebook. What I envision is not a Blue Book but a White Book. It can supply templates, rules, formats, and other guidelines for how to compose a usable legal document. It is not about the content, it is about the document as a thing—its layout, its flow, its composition. It regards a legal document as a product in itself. It focuses on how the clients (and other stakeholders) will use it, interact with it, and live with it. This book of good design patterns is essential for lawyers right now, and their clients. MARGARET HAGEN, http://www.openlawlab.com/2013/06/07/book-of-legal-design-patterns/

Our founding vision was for an easy-to-use, online service that helped people create their own legal documents. . . . [O]ur mission was to set new standards for convenience and service in an industry not typically known for great customer care. Legal Zoom, http://www.legalzoom.com/about

Whether you want a quick and simple legal document for free, or have a more complex legal situation requiring the advice of an attorney, Rocket Lawyer is here to help. RocketLawyer, http://www.rocketlawyer.com/what-we-do.rl

From here (3)
Law schools are another possible source of document design innovation; as Davis and others have noted, academic institutions are well positioned to provide platforms for innovation dissemination. Doctrinal, legal writing, and clinical classes all provide venues for exploring whether governance, contract, and other documents are in fact best seen, like here, as maps and guides for organizational behavior or, instead, are better viewed and written as defensive, CYA, in-the-drawer documents to be brought out if there’s an (unlikely) audit or litigation. Faculty can collaborate with scholars who study contract innovation, with academics in other disciplines, and with external professionals and commercial actors.

Academic actors that are inclined to innovate are probably also inclined to invest in disseminating those innovations, subject to resource constraints... Academic institutions and other mission-driven organizations are also well suited to establish and maintain platforms that disseminate user innovations. KEVIN DAVIS (122)
From here (4)

Transactional clinics provide relevant practice environments. We can experiment with new approaches (with openness about what we’re doing and within limits while mindful that most of our students are headed to traditional firms), and we have the time for, and educational goal of, engaging deeply with clients. More broadly, in the clinic we isolate and study elements of professional performance, and we try to help students build good habits of mind and, fundamentally, the stance of a lawyer. There is something to be said about trying to inculcate in students the intense focus on user experience, and the deep attention to product functionality and thoughtful execution, that characterizes the designer. It’s also interesting to think about trying to inculcate in students the intense focus on user experience, and the deep attention to product functionality and thoughtful execution, that characterizes the designer. It’s also interesting to think about the ethical principles of competence, diligence, and communication from this perspective, as well as the professional norm and commercial imperative of commitment to client service. And, finally, there may be a neat opportunity to blend old-fashioned craft virtues with contemporary practices and technologies. After all, we’re in the business of making objects for people. Shouldn’t we introduce students to all of the tools in the workshop?

Craft products [can be] evaluated both in terms of form and function. Form relates to the aesthetics of the production, attention to detail, the quality of the finish, the integrity of the object, and in general to the quality of the construction. Function relates to how well the object suits its intended use, whether the materials are of an appropriate type and quality, innovation, quality of replication of its model, and how well the object holds up over time.

BRETT SCHARFS (2299)
Documents as products

Documents can help people find their way, whether it’s governing an organization, carrying out a contractual obligation, or navigating a regulatory process. Lawyers have some good tools for making these products; standard forms and precedents from prior engagements are prime examples. But, corporate lawyers don’t seem to use other tools whose employment might contribute to the utility and value of the product for the client. Those tools, used by designers, include a stance toward the work focused on the reader and actual user experience, and an attention to typography, to facilitating communicative effectiveness through careful attention to the presentation of text and image. This paper reflects an early effort by corporate lawyers to learn from designers and the objects they produce for their clients. It also reflects an encouragement to lawyers, and to others who read, use, and study documents, to find their way to these tools and inspirations, to experiment, prototype, and test new executions of core legal products, and to take fuller responsibility for our outputs. We share a lot in common with designers in how we do our work, and we can learn a lot from them in how to do better work.
Putting Some Product Into Work-Product

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