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You Can Quote Me: Quoting in Legal Writing—Part I

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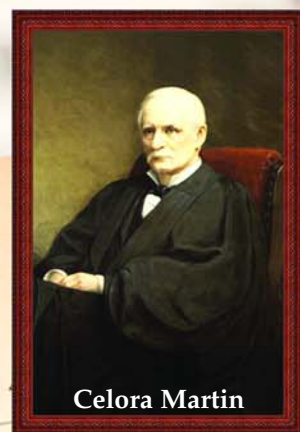


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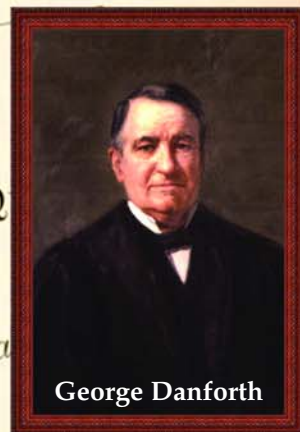
Journal

THE JAMAICA SCHOOL WAR

Public School No. 49, Jamaica, L. I.



Celora Martin



George Danforth

pp. Div.]
THE PEOPLE OF THE STATE OF NEW YORK ex rel. ELIZABETH
Appellant, v. THE SCHOOL BOARD OF THE BOROUGH OF Q
NEW YORK CITY, Respondent.

*Education of negro children, in common schools, by themselves — under wha
stances it is constitutional.*

Section 28 of title 15 of the Consolidated School Law (2 R. S. [9th ed.] 1497),
providing "The school authorities of any city or inc
schools of which are or shall be organized under title
this act, or under special act, may, when they shall dee
a separate school, or separate schools, for the instr
of African descent, resident therein, and over f
school or schools shall be support
schools supported therein for
ulations, and be

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You Can Quote Me: Quoting in Legal Writing — Part I

BY GERALD LEBOVITS

If legal writing is the hardest of the legal arts to master, quoting well is the hardest of the legal-writing arts. Few even know that “quote” is a verb and “quotation,” a noun: “Lawyers use too many quotes [should be *quotations*] in their briefs.” This column is dedicated to the art of quoting.

Quote the Relevant and No More

Quote the relevant — but only the relevant — part of a case, secondary authority, testimony, opponent’s argument, or statutory or contractual provision. Otherwise, eliminate all but pungent quotations. As someone once said, in a passage worth quoting, “I hate quotations. I don’t read them unless I must. Tell me what you know, in your own words.”

Quote essentials, memorable sound bites, succinct things others have said better than you can, authoritative sources, and anything in dispute. Quoting helps clarify who said what to whom when other signals are weak.

Then give the citation from which you’re quoting: the exact pinpoint (jump) page or pages of your case, article, or book; the exact section, down to the subdivision, subsection, or paragraph, of your statute, rule, or regulation; the exact exhibit, including any page and paragraph; and the exact page of testimony. Citing your sources with precision will force you to quote precisely and lead you to other good citations. Citing with precision will also make it easier for your reader to find your references and will lend integrity, authority, and power to your writing. Quoting and then citing precisely tells the judge, “Don’t take my word for it. Here’s the proof.” Offering compelling proof in an understated

way is what persuasive advocacy is all about.

When done correctly, in context, accurately, and reasonably, quoting is good. Quotations prove that your argument is reliable, so reliable that the reader needn’t consult the source to confirm the reliability of your argument. Paraphrasing often detracts from reliability.

Quoting excessively or at length, however, reveals a lack of analysis. Anyone can cut and paste, and “[r]eaders generally dislike a paste-pot [brief].”¹ Quoting at length also makes legal writing look too dense and can inadvertently contradict or weaken your point.

Legal writers should know their sources before they quote them. Some authors are quoted and cited often; others are never quoted or cited. Most authors quoted and cited often are reputed to be principled, intelligent, sincere, and knowledgeable. Authors not seen as credible sources shouldn’t be cited. Don’t quote those afflicted by baggage or stigma, no matter how clever or on point their lines are. Never quote an obscure source. Doing so is alienating and confusing, and you’ll waste space explaining why you’re quoting the obscure.

Don’t quote the over-quoted. How many times can Tocqueville appear in print? What of Yogi Berra? Especially because he’s quoted as saying, “I never said 85 percent of the things I said.”²

George Bernard Shaw is reported to have said, “I often quote myself. It adds spice to my conversation.”³ What’s true for conversationalists is untrue for judges. Trial judges shouldn’t cite or quote themselves. Appellate judges should cite and quote their courts’ opinions to show adherence to

precedent but should avoid quoting from opinions they wrote. Scholars may cite and quote themselves if relevant and done unpretentiously.⁴

Lead-outs, Lead-ins, Weaves, and Upshots

Don’t begin sentences — or, worse, paragraphs — with quotations in legal writing. Beginning with quotations causes your quotations to go unread.

Bad form: The Court of Appeals discussed the law-of-the-case doctrine. “[A] court should not ordinarily reconsider, disturb or overrule an order in the same action of another court of coordinate jurisdiction.” *In re Dondi v. Jones*, 40 N.Y.2d 8, 15 (1976).

“I never said 85 percent of the things I said.”
— Yogi Berra

To integrate your quotation into your writing, weave your quotation into your sentence or introduce it with a lead-in or, better, an upshot. These introductions will assure that your reader reads your quotation.

Lead-outs: Use lead-outs in nonlegal writing but not in legal writing. Journalism’s single lead-out: “My client is innocent,” *the defense lawyer said*. (The lead-out in this example is italicized.) Fiction’s double lead-out: After Professor Kingsfield in *The Paper Chase* gave a student a dime and told him to call his mother to tell her that he’ll never become a lawyer, the student screamed: “You’re a son of a bitch, Kingsfield.” “That’s the first intelligent thing you’ve said,” *Kingsfield replied*. “Come back. Perhaps I’ve been too hasty.”⁵ (The double lead-out in this example is italicized.)

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Lead-ins: Lead-in tag lines introduce the reader to a necessary quotation that might otherwise be skimmed or entirely ignored. Lead-ins prevent sentences and paragraphs from beginning with a quotation. Many lead-ins are boring, but they're better than no introduction at all: "[A] court should not ordinarily reconsider, disturb or overrule an order in the same action of another court of co-ordinate jurisdiction." *In re Dondi v. Jones*, 40 N.Y.2d 8, 15 (1976). *Becomes:* As the Court of Appeals has explained, "a court should not ordinarily reconsider, disturb or overrule an order in the same action of another court of co-ordinate jurisdiction." *In re Dondi v. Jones*, 40 N.Y.2d 8, 15 (1976).

Upshots: An upshot is the most effective way to introduce a quotation. Upshots precede a quotation and paraphrase its meaning. Reserve upshots for important quotations you want to explain and emphasize. Upshots force the reader to read the passage twice and thus give you double the bang for your buck: "[A] court should not ordinarily reconsider, disturb or overrule an order in the same action of another court of co-ordinate jurisdiction." *In re Dondi v. Jones*, 40 N.Y.2d 8, 15 (1976). *Becomes:* The law-of-the-case doctrine prohibits one co-equal judge from reversing another: "[A] court should not ordinarily reconsider, disturb or overrule an order in the same action of another court of co-ordinate jurisdiction." *In re Dondi v. Jones*, 40 N.Y.2d 8, 15 (1976). The best upshots are not boring at all. They excite interest by summarizing the quotation that follows the upshot.

Weaves: A direct weave integrates the quotation directly into your sentence: "I believe that a triable issue of fact exists." *X v. Y*, 1 Misc. 2d 1, 2 (Sup. Ct., Nassau County 1991). *Becomes:* Judge Smith denied the summary-judgment motion because he found "a triable issue of fact." *X v. Y*, 1 Misc. 2d 1, 2 (Sup. Ct., Nassau County 1991). An

indirect weave uses a preceding comma to link an introductory clause to a quotation.

Quote Accurately

Double check the accuracy of your quotation comma by comma, letter by letter. One slip and the inspector of the quotation police — Ms. Quoting — will knock on your door late at night to arrest you.

**"Quote me as saying,
'I was misquoted.'
— Groucho Marx**

Tow (really *toe*) the line. From Groucho Marx: "Quote me as saying, 'I was misquoted.'" Why are some famous quotations misquoted? Because folk etymology alters the original, often for the better, and because few consult the original. A "Welsh rarebit," for example, a dish of melted cheese on toast or crackers, was originally called a "Welsh rabbit." But the dish contained no rabbit meat, and thus the original changed. The critical lesson is that legal writers must verify the accuracy of every quotation, including every quotation within a quotation, by reading the original. And the original must be read in hard copy. Online sources are sometimes scanned or re-keyed incorrectly.

The following examples are inspired by teaching notes from New York Law School Professor I. Cathy Glaser and Academic Dean Jethro K. Lieberman:

Incorrect: "Hard cases make bad law." *Correct:* "Hard cases, it has been frequently observed, are apt to introduce bad law."⁶ *Correct:* "Hard cases, it is said, make bad law."⁷ *Correct:* "Great cases, like hard cases, make bad law. For great cases are called great, not by reason of their real importance in shaping the law of the future, but because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment."⁸

Incorrect: "[F]ree speech would not protect a man shouting fire in a crowded theater." *Correct:* "[F]ree speech would not protect a man in falsely shouting fire in a theater and causing a panic."⁹

Incorrect: "The devil can quote Scripture for his own purpose." *Correct:* "The devil can cite Scripture for his own purpose."¹⁰

Incorrect: "All that glistens [or glitters] is not gold." *Correct:* "All that glitters is not gold."¹¹

Incorrect: "To gild the lily." *Correct:* "To gild refined gold, to paint the lily."¹²

Incorrect: "Hoisted on his own petard." *Correct:* "Hoist with his own petar."¹³

Incorrect: "Consistency is the hobgoblin of little minds." *Correct:* "A foolish consistency is the hobgoblin of little minds."¹⁴

Incorrect: "I have nothing to offer but blood, sweat, and tears." *Correct:* "I have nothing to offer but blood, toil, tears, and sweat."¹⁵

Incorrect: "Music hath charms to soothe the savage beast." *Correct:* "Music hath charms to soothe the savage breast."¹⁶

Incorrect: "All power corrupts, and absolute power corrupts absolutely." *Correct:* "All power tends to corrupt, and absolute power corrupts absolutely."¹⁷

Incorrect: "A little knowledge is a dangerous thing." *Correct:* "A little Learning is a dangerous thing."¹⁸

Incorrect: "I escaped by the skin of my teeth." *Correct:* "I escaped with the skin of my teeth."¹⁹

Incorrect: "Money is the root of all evil." *Correct:* "[T]he love of money is the root of all evil . . ."²⁰ Shaw, by the way, popularized this twist: "The lack of money is the root of all evil."²¹

Next month: This column continues with punctuating, blocking, altering, and omitting quotations.

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1. American Bar Association–Appellate Judges Conference, *Judicial Opinion Writing Manual* 13 (1991).
2. See Yogi Berra, *The Yogi Book or I Really Didn't Say Everything I Said* (1998).
3. West's Legal News, 1996 WL 399706, "Juris Dictions: Quotes and Notes" (July 18, 1996).
4. For an especially brilliant discussion of why writers shouldn't cite themselves, see Gerald Lebovits, *Advanced Judicial Opinion Writing: A*

Handbook for New York State Trial and Appellate Courts 339 (7.3 ed., N.Y.S. Office of Ct. Admin., 2003).

5. John Jay Osborn, Jr., *The Paper Chase* 15 (1971).
6. *Winterbottom v. Wright*, 10 W & M 109, 152 Eng. Rep. 402, 406 (Ex. of Pleas 1842) (Rolfe, B.).
7. *Ex Parte Long*, 3 W.R. 19 (Q.B. 1854, Lord Campbell, Ch. J.).
8. *Northern Securities Co. v. United States*, 193 U.S. 197, 400 (1904) (Holmes, J., dissenting).
9. *Schenck v. United States*, 249 U.S. 47, 52 (1919) (Holmes, J., dissenting).
10. William Shakespeare, *The Merchant of Venice* act I, sc. III.
11. *Id.* at act II, sc. VII.
12. William Shakespeare, *King John* act IV, sc. II.
13. William Shakespeare, *Hamlet* act III, sc. 4.
14. Ralph W. Emerson, *Self-Reliance* in Ralph Waldo Emerson 131, 137 (R. Poirier ed., 1990).
15. Winston S. Churchill, *Blood, Toil, Tears and Sweat: The Speeches of Winston Churchill* (David Cannadine ed., 1989).
16. Gertrude Block, *Language Tips*, 69 N.Y. St. B.J. 53, 53 (Jan. 1997) (quoting William Congreve).
17. *World Treasury of Religious Quotations* 100 (Ralph L. Woods ed., 1966) (letter of Apr. 5, 1881, from Lord Acton to Bishop Mandell Creighton).
18. Alexander Pope, An Essay on Criticism, in *The Complete Poetical Works of Alexander Pope* 70 (Henry W. Boynton ed., Riverside Press 1903).
19. Job 14:1 (King James).
20. I Timothy 6:10 (quoting St. Paul) (King James).
21. Leonard L. Levinson, *Webster's Unafraid Dictionary* 131 (1967) (quoting George Bernard Shaw).