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

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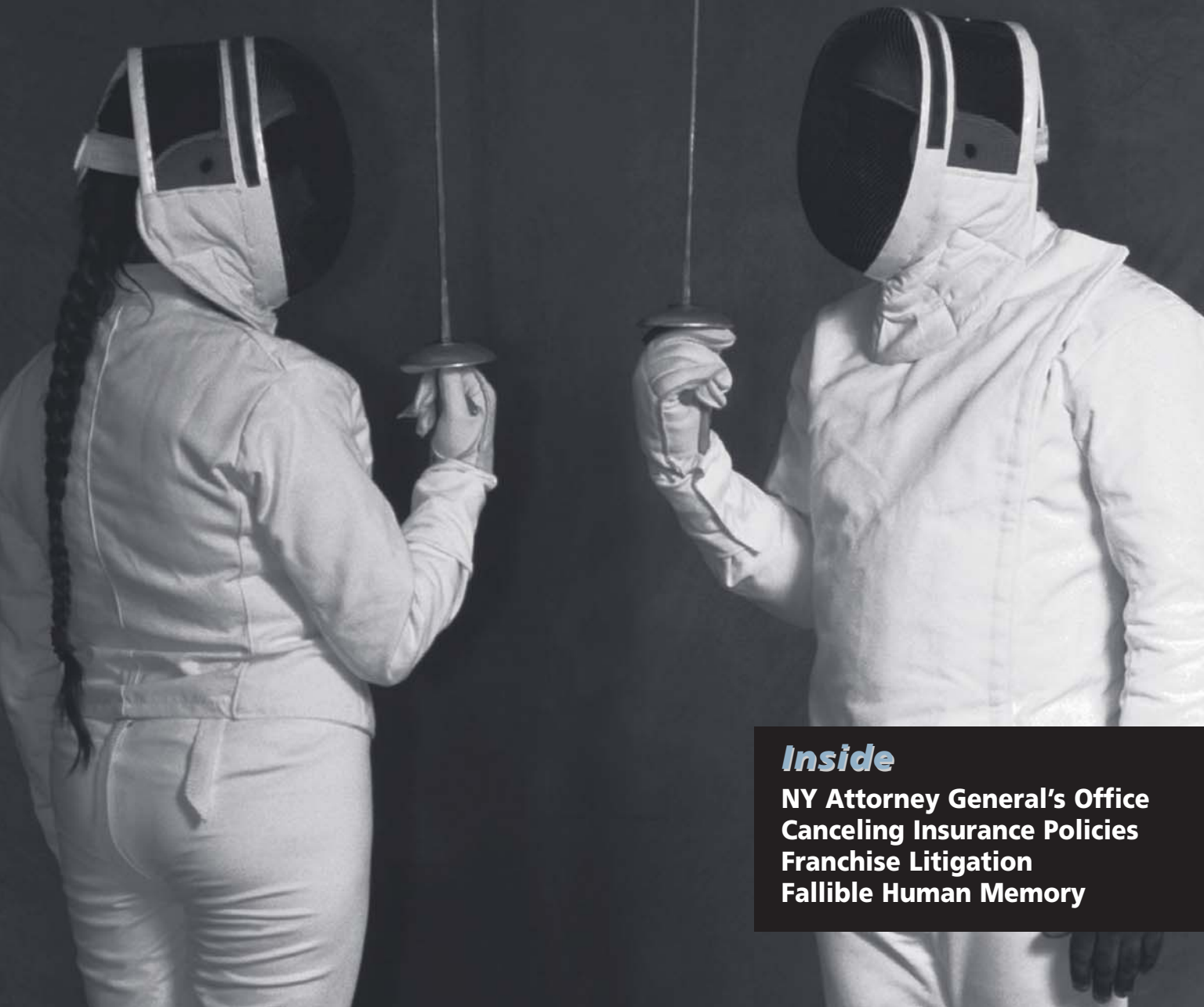


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You Can Quote Me: Quoting in Legal Writing — Part II

BY GERALD LEBOVITS

Last month the *Legal Writer* offered some “suggestions” on how to quote. We continue.

Punctuation

There’s no question about this. Period! It’s not logic. It’s not what looks better. It’s modern American usage. To ascertain what’s now the standard format, Doubting Thomases should skim current New York State Court of Appeals and federal opinions; every large American newspaper, magazine, and popular book; and the 2002 *Tanbook*, New York’s official citation guide.¹

Here are the rules: Place periods and commas inside the quotation mark. Place colons and semicolons outside the quotation mark. Place em dashes, question marks, and exclamation points inside or outside quotation marks depending on whether dashes, marks, or points are part of the original.

Correct: Did Judge Jones sentence defendant to “100 years in jail”? (Question mark not part of original.) Correct double quotation: “Did Judge Jones sentence defendant to ‘100 years in jail?’”

Correct: Judge Jones asked the Parole Board, “Will defendant really serve 100 years in jail?” (Question mark part of original.) Correct double quotation: “Judge Jones asked the Parole Board, ‘Will defendant really serve 100 years in jail?’”

Correct: Judge Jones sentenced defendant to “100 years in jail!” (Exclamation point not part of the original.) Correct double quotation: “Judge Jones sentenced defendant to ‘100 years in jail!’”

Correct: Judge Jones told defendant, “You will serve 100 years in jail!” (Exclamation point part of the original.)

Correct double quotation: “Judge Jones told the defendant, ‘You will serve 100 years in jail!’”

Quotations within quotations: “X was a ‘good sport,’” said Y. (Note that British usage and American newspaper headlines begin and end quotations with a single quotation mark: *New York Post* front-page headline of February 16, 1990: ‘Best Sex I Ever Had!’²)

Some folks put a comma before every quotation. Doing so is wrong. Put a comma before a quotation only (1) when the quotation is an independent clause and (2) when what precedes the quotation is inapposite to the quotation or to replace a “that” or a “whether” before the quotation.

Blocked Quotations

Avoid blocked (single-spaced, double indented) quotations (also known as “block quotations”) unless you’re quoting important provisions of a statute or a contract or a critical test from a case. Even then, it’s best to divide your quotation into several parts and to integrate your quotation into your text — or at least to pare down your quotation to its basics. For busy practitioners, “simply attach photocopies of the authority as an appendix to your document.”³ That’s because, writes Hofstra University Professor Richard Neumann, blocked quotations are bad:

Readers feel that block quotations are obstacles that have to be climbed over. The more you use them, the more quickly a reader will refuse to read any of them. And judges and supervising attorneys view large quotations as evidence of a legal writer’s laziness. They think that your job is to find the essential words, isolate them, and concisely paraphrase the rest.⁴

If you must use lengthy quotations, follow these conventions: Block all quotations of 50 words or four lines of text or more, although “some writers use [blocked] quotations for persuasive reasons even when the quotation is fairly short.”⁵ Under the *Tanbook*, New York State’s official citation manual, put the citation at the end of the blocked quotation, after the closing quotation marks. Under the *Bluebook*, put the citation on the next line. Under both the *Tanbook* and the *Bluebook*, single space blocked quotations, but double space between blocked paragraphs.

**Don’t “snippetize.”
“Snippet quotations”
will “give the reader”
the sensation “of sliding”
along “the surface of”
complicated “issues.”**

Under the *Tanbook*, put double quotation marks around the entire blocked quotation, and put single quotation marks around a quotation within a quotation. The *Tanbook’s* justification for putting quotation marks around the entire blocked quotation is that online services don’t preserve the indentations around the blocked quotation. Under the *Bluebook*, however, never surround the quotation with quotation marks, but put double quotation marks around a quotation within a quotation. The *Bluebook’s* justification for not putting quotation marks around the entire blocked quotation is that “[t]he double signal is a crutch”⁶

Never, under the *Tanbook* and the *Bluebook*, end a paragraph with a blocked quotation. The line that precedes the blocked quotation may not

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end with a period. Thus, never begin a blocked quotation without an introduction from the line preceding the quotation. The introduction may be a colon, a comma, or no punctuation at all.

If you omit one or more paragraphs in a blocked quotation, go to the next line, indent, insert four ellipses (“...”) preceded by a quotation mark, and resume the quotation on the next line, skipping a space.

Under the *Tanbook*, if your blocked quotation has more than one paragraph, begin each paragraph with quotation marks but place the closing quotation mark only at the end of the final paragraph, not after each paragraph.

Cousins of the blocked quotation are run-on and snippet quotations. Never use them. Run-on quotations are quotations that follow one another. They’ll burn your reader’s brain cells. Snippet quotations are strings of snippetizing, or too many short quotations in a row. These “snippet quotations” will “give the reader”⁸ the sensation “of sliding”⁹ along “the surface of”¹⁰ complicated “issues.”¹¹

Alterations & Omissions

Alter, add to, or delete from your quotation to assure a grammatical fit in your sentence. But paraphrase instead of overly altering your quotation. If you alter your quotation too much, you’ll invite suspicion that you’re fudging its meaning.

Use brackets “[]” (not parentheses) to show alterations or additions to a letter or letters in a word: Alteration: “Clearly” becomes “Clear[.]” (Note the empty bracket.) “Proof” becomes “Pro[ve].” “Clearly” becomes “[c]learly.” “Clerly” becomes “Cle[a]rly.” Addition: “The judge did [not] like to arrive latte [sic] to court.” Note: When quoted material contains a spelling, usage, or factual error, use “[sic]” (or “[sic]” in *Tanbook* usage), meaning “thus,” after the error. Using “sic” tells your readers that the original quotation is ill.

If the context makes it clear that the mistake was in the original, don’t add “[sic].” And don’t overuse the “[sic]” device. The reader will wonder why the author quoted material only to point out an error. Did the author mean to embarrass? Altering the quotation is often the answer: “The judge did [not] like to arrive lat[te] to court.” Other times paraphrasing is better: “The judge liked to come to court on time.” A third option is “to find another quot[ation] that fits the situation without needing . . . extensive surgery.”¹²

An update to the 2002 Tanbook effective June 2004 eliminates asterisks *****

Use ellipses to show omission. Use three-dot ellipses (“...”), all separated by spaces, to show omissions of punctuation or a word or more in the middle of your sentence. Use four-dot ellipses (“....”), all separated by spaces, to show omissions at the end of a sentence if (1) the end of the quotation is omitted; (2) the part omitted is not a citation or a footnote; and (3) the remaining portion is an independent clause. Unless all three criteria are satisfied, use a period, not an ellipse. Note that an update to the 2002 *Tanbook* effective June 2004 eliminates asterisks “*****”. From June forward, all New York legal writers should use ellipses.

When using ellipses to quote from only the relevant portion of something, don’t write: “The statute provides, in relevant part,” Your ellipses already show that you quoted the relevant portion only. The phrase “in relevant part” is always unnecessary. Quote only the relevant part.

Don’t use ellipses before the portion you quote. You’re already telling the reader whether you’re omitting something by how you introduce your quotation: *Incorrect*: The Third Department found that the action “. . . should not have been dismissed.” *Monfort v.*

Larson, 257 A.D.2d 261, 265 (3d Dep’t 1999). *Correct*: The Third Department found that the action “should not have been dismissed.” *Monfort v. Larson*, 257 A.D.2d 261, 265 (3d Dep’t 1999). *Incorrect*: The Third Department found the “. . . fourth cause of action” valid in *Monfort v. Larson*, 257 A.D.2d 261, 265 (3d Dep’t 1999). *Correct*: The Third Department found the “fourth cause of action” valid in *Monfort v. Larson*, 257 A.D.2d 261, 265 (3d Dep’t 1999). Moreover, don’t use ellipses after the portion you quote if you add material after your quotation. *Incorrect*: The Third Department found the “fourth cause of action . . .” valid in *Monfort v. Larson*, 257 A.D.2d 261, 265 (3d Dep’t 1999). And don’t use quotation marks until you start to quote. *Incorrect*: “[The litigants] sought to dissolve their marriage.” *O’Shea v. O’Shea*, 93 N.Y.2d 187, 189 (1999). *Correct*: The litigants “sought to dissolve their marriage.” *O’Shea v. O’Shea*, 93 N.Y.2d 187, 189 (1999).

Don’t use ellipses to show the omission of a footnote or a citation before the end of the portion you’re quoting. Instead, follow the citation with a notation that something is omitted, added, or deleted. Thus, write and cite: “As explained elsewhere, [w]hen sanitation workers — New York’s *Strongest* — are assigned to courthouses, they follow the “litter of the law.”” *A v. B*, 101 Misc. 2d 101, 103 (Sup. Ct., Bronx County 1996) (quoting *B v. A*, 99 Misc. 2d 99, 100–01 (County Ct., Rockland County 1999) (footnotes & citations in *A v. B* omitted) (emphasis in *B v. A* deleted) (emphasis in *A v. B* added)). Note: The *Tanbook* provides that italics in published opinions, if supplied in the Official Reports, should be noted in a parenthetical or a bracket: “(italics supplied).”

Add “footnote added” in a parenthetical (bracket inside a parenthetical in *Tanbook* usage) after your citation if you add to your quotation a footnote not in the original quotation. According to the *Bluebook*, don’t use

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“footnote omitted” or “citation omitted” if the citation or footnote you’re omitting is at the end of the portion you’re quoting. That comes up often under the *Tanbook*, too, which allows writers (1) to end a sentence with a period and then begin the citation after a parenthetical or (2) to end a sentence without a period and then begin the citation with a parenthetical. (In the first option, the period is placed outside the parenthetical. In the second option, the period is placed inside the parenthetical.)

Q & A of Quoting

Use quotation marks when quoting the words of others. The difference between scholarship and plagiarism is a quotation mark and a citation. Also, use quotation marks for specific phrases and direct speech. Quotation marks further indicate that the word refers to the word itself rather than the word’s meaning. (Hint: could the words “word,” “phrase,” or “term” precede the definition?) *Correct*: “Anyone who uses ‘mens rea’ instead of ‘guilty intent’ should have a guilty conscience.” Quotation marks additionally surround the words “endorsed,” “entitled,” or “signed” (the contract was signed “Jane Roe”).

Don’t insert quotation marks inside a parenthetical to surround proper nouns not turned into acronyms. *Correct*: Lesbian and Gay Law Association of Greater New York (“LeGaL”) or, without the quotation marks, (LeGaL). *Incorrect*: John Jones (“Jones”). Also, don’t use quotation marks when paraphrasing; around the words “yes” or “no” (*incorrect*: He said “yes.”); around terms of art (*incorrect*: The People proved that defendant had a “guilty mind.”); or to indicate sarcasm or irony, unless you want to be labeled “egotistical.” Thus, don’t use “scare” quotation marks. *Bad form*: My adversary filed a “brief” filled with “facts.” Slang and nonstandard usage, too, must go without quotation marks: “If you feel uncomfortable using a

word because it is informal or ambiguous, change the word rather than put[] it in quotation marks.”¹³ Avoid quoting the facts of a case you’re citing. Quote only the case’s law unless you’ve got a special reason to quote facts. And never quote from, or cite to, a headnote or the syllabus of a case.

Finally, always be certain to open and close your quotation marks. It’s a sign of sloppiness for lawyers “to open but not close quotations, or verse visa.”¹⁴

Quote, unquote: All lawyers who write should quote — not too much, not too little, always accurately, always with complete citation references, and always in context and syntactically. You can quote me on that.

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1. See *Official Edition New York Law Reports Style Manual* (2002 ed.). Some *Tanbook* rules will change effective June 2004. To download the *Tanbook*, go to www.courts.state.ny.us/reporter/Styman_Menu.htm. For a review of the 2002 *Tanbook*, see Gerald Lebovits, *New Edition of State’s “Tanbook” Implements Extensive Revisions in Quest for Greater Clarity*, 74 N.Y. St. B.J. 8 (Mar./Apr. 2002).
2. N.Y. Post, Feb. 16, 1990, at A1 (quoting Marla Maples referencing Donald Trump), cited in Jerry Nachman, N.Y. Post editor, *Annual Judicial Conference of the Second Circuit*, 141 F.R.D. 573, 637 (1992). The *Post*’s most famous headline is from April 15, 1983: “Headless Body in Topless Bar.”
3. Charles R. Calleros, *Legal Method and Legal Writing* 313 (4th ed. 2002).
4. Richard K. Neumann, Jr., *Legal Reasoning and Legal Writing: Structure, Strategy, and Style* § 17.6, at 249 (4th ed. 2001).
5. Anne Enquist & Laurel Currie Oates, *Just Writing: Grammar,*

Punctuation, and Style for the Legal Writer § 9.5.1.b, at 241 (2001).

6. Terri LeClercq, *Expert Legal Writing* 161 (1995).
7. Neumann, *supra* note 4, § 17.6, at 250.
8. *Id.*
9. *Id.*
10. *Id.*
11. *Id.*
12. Mary Barnard Ray & Jill J. Ramsfield, *Legal Writing: Getting it Written and Getting it Right* 291 (3d ed. 2000).
13. *Id.* at 296.
14. Doesn’t the missing closing quotation mark irritate you?