

Columbia Law School

From the Selected Works of Hon. Gerald Lebovits

May, 2008

Do's, Don'ts & Maybes: Legal Writing Punctuation—Part III

Gerald Lebovits



Available at: https://works.bepress.com/gerald_lebovits/112/

MAY 2008
VOL. 80 | NO. 4

NEW YORK STATE BAR ASSOCIATION

Journal



Wildlife Conservation Under the Lacey Act

*International Cooperation or
Legal Imperialism?*

by Victor J. Rocco

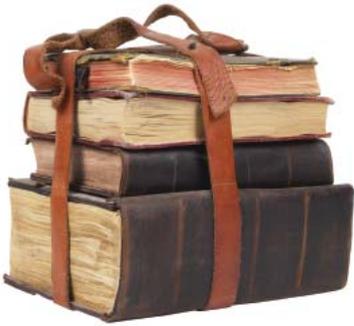
Celebrating
Law Day 2008

Also in this Issue

Health Insurance
Subrogation

Authenticating Medical
Records

Consumer Class Actions
Electronic Witnesses



Do's, Don'ts, and Maybes: Legal Writing Punctuation — Part III

In the last two columns, the Legal Writer discussed nine punctuation issues in legal writing. We continue with six more.

10. Quotation marks. Quotation marks come in three forms: single quotation marks (' '), double quotation marks (" "), and triple quotation marks (" " "). To save space, British writers and American newspaper headlines use single quotation marks around quotations instead of double quotation marks. Other than for headlines, American usage requires that the first quotation mark be a double quotation mark and that the first internal quotation mark be a single quotation mark. The second internal quotation mark is a double quotation mark. *Example of a first quotation mark with single and double internal quotation marks:* "The judge noted that he'd never seen 'such "brilliant" lawyering' in all his years on the bench."

Use quotation marks for direct quotations, including a speaker's words. *Example:* "I told him I pulled the trigger because he deserved it." Don't use quotation marks until you start the quotation. *Incorrect:* "[The witness testified that she] pulled the trigger because he deserved it." *Correct:* The witness testified that she "pulled the trigger because he deserved it."

Don't use quotation marks and hyphens together. *Incorrect:* "Exculpatory-no" doctrine. *Correct:* Exculpatory-no doctrine or "exculpatory no" doctrine. *Incorrect:* "So-called" Spiegel Law. *Correct:* So-called Spiegel Law or "so called" Spiegel Law.

Use quotation marks to note that a word or phrase is inappropriate in

context, but do so sparingly. *Example:* The "litter" of the law.

Overusing quotation marks will make you look egotistical or sarcastic. *Example:* My adversary's appellate brief was anything but "brief." Language loses impact with overused quotation marks. Make readers focus on content, not style, and especially not exaggerated style.

Use quotation marks to set off definitions or to explain or express words and phrases. *Examples:* "Sui generis" comes from Latin and originally meant "of its own kind." You should have a guilty conscience if you write "mens rea" instead of "guilty intent."

Use quotation marks to signal a newly invented word or phrase or an old word or phrase used in a new context. *Example:* He spent all his free time in front of a computer. Some would call him a "mouse potato."

Don't enclose indirect quotations — what someone says but not in the exact, original language — with quotation marks. *Example:* The judge told the attorneys to take their clients to the conference room.

In official New York State (Tanbook) style, enclose all quotations, including blocked quotations — single-spaced and double-indented quotations having 50 words or more — with quotation marks.¹

According to the Bluebook, only quotations of 49 words or fewer should have quotation marks.² Quotations of 49 words or fewer should not be set off from the rest of the text. Quotations of 50 or more words (blocked quotations) should not have quotation marks around the text.³

According to the Association of Legal Writing Directors (ALWD) Citation Manual, use quotation marks for quotations of 49 or fewer words or if the quotation runs fewer than four lines of typed text and is not an epigraph or a quotation of verse or poetry.⁴ For blocked quotations — if the quotation has 50 or more words, if it exceeds four lines of typed text, or if the material quoted is a verse or poem — don't use quotation marks at the beginning or end of the quotation.⁵

Single-paragraph quotations have quotation marks at the beginning and end of the quoted language. Multiple-paragraph quotations have quotation marks only at the beginning of each paragraph and at the end of the last paragraph.

Footnote and endnote numbers always go outside quotation marks. See text accompanying endnote 8 in this column for an example.

Parenthetical citations always go outside quotation marks. *Tanbook example:* "The court found no illusory tenancy." (See *Plaintiff v Defendant*, 50 AD2d 50, 50 [5th Dept 2009].)

Finally, the most important rules: Don't overquote; overquoting substitutes for analysis. Quote accurately; accurate quoting makes readers trust you. And use quotation marks if you're quoting; quote to be seen as a scholar, not a plagiarist.

11. Apostrophes. Use apostrophes to show ownership or possession, indicate a contraction, or form plurals.

Use apostrophes to form possessive nouns or pronouns. *Examples:* "She went to the judge's chambers

CONTINUED ON PAGE 53

to use the telephone." "The court's rules require the parties to appear at 9:30 a.m." Apostrophes for some inanimate objects look inelegant. *Inelegant:* "Section 8's provisions require plaintiffs to seek administrative review." *Therefore:* "The provisions of Section 8 require plaintiffs to seek administrative review." Another inelegant apostrophe: "ABC Corporation's (ABC) stock certificates." *Therefore:* "The stock certificates of ABC Corporation (ABC)."

Some writers recommend using an apostrophe "s" after a singular possessive ending in a sibilant (ch, s, sh, x, z, and zh sound). Others use an apostrophe but omit the "s" after the apostrophe. The Legal Writer recommends adding an apostrophe "s." *Examples:* "Schwartz's brief"; "Myers's letter"; "boss's memo"; "witness's statement." The apostrophe "s" rule applies to sibilants, not to words that merely end in ch, s, sh, x, or z. *Incorrect:* Illinois's. *Correct:* Illinois'. The "s" in Illinois is

attorneys moved for a mistrial." (Mary had an attorney; Jane had her own attorney.) When one of the possessors in a compound possessive is a personal pronoun, put both possessors in the possessive form to avoid confusing the reader. *Incorrect:* "Josh and my computers were erased last night." If you don't put an apostrophe "s" here, the reader will believe that Josh was erased last night. *Correct:* "Josh's and my computers were erased last night."

For numbers and abbreviations, it's optional to put an apostrophe before the "s." Use them to eliminate confusion. If your reader will understand you if you don't use an apostrophe, don't use one. 1960's or 1960s? "1960s" is more common, but "1960's" isn't tragic. Consider, however, the following example: "Judge Roe presided in the '40s." Putting an apostrophe before the "s" will confuse readers; leave it out.

"As" or "A's? *Example:* "She received only As in law school." "As" will confuse the reader: It could stand for the plural of "A" or the word "as." *Therefore:* "She received only A's in law school." UFOs or UFO's? Use an apostrophe if the reader will be confused without it.

Don't add an apostrophe to pluralize an abbreviation that has no internal periods. *Incorrect:* "OK's." *Correct:* "OKs." Add an apostrophe to the "s" to abbreviations that have internal periods. *Incorrect:* "J.D.s." *Correct:* "J.D.'s." *Incorrect:* "R.N.s." *Correct:* "R.N.'s." *Incorrect:* "Ph.D.s." *Correct:* "Ph.D.'s."

American holidays and greetings: "April Fool's Day," "Father's Day," "Mother's Day," "New Year's Day," "St. Patrick's Day," "St. Valentine's Day," and "Season's Greetings" all have their singular possessive form. "All Souls' Day" (Halloween) and "Parents' Day" take the plural form. "Martin Luther King Jr. Day" has no possessive. "Presidents Day" and "Veterans Day" are plural but not possessive; we celebrate the holiday in honor of Presidents Washington and Lincoln

Overusing quotation marks will make you look egotistical or sarcastic.

In informal writing (and Legal Writer columns), use apostrophes to indicate a contraction: "Cannot" becomes "can't." "Do not" becomes "don't." "He is" becomes "he's." "I am" becomes "I'm." "It is" or "it has" becomes "it's" (different from the possessive "its"). "She is" becomes "she's." "They are" becomes "they're" (different from the possessive "their" or the location "there"). "We are" becomes "we're" (different from the subjunctive or the past plural "were"). "Who is" becomes "who's" (different from the possessive "whose"). "Would not" becomes "wouldn't." "You are" becomes "you're" (different from the possessive "your"). "You have" becomes "you've." *Examples:* "He's the firm's hardest-working attorney." "Who's going to cross-examine the witness?" "Don't argue with the judge."

Use apostrophes to omit letters. *Examples:* "Rockin' with the Oldies" (omitting a "g"). "Good ol' boy" (omitting a "d"). "Bucket o' chicken" (omitting an "f"). "Wishin' you luck" (omitting a "g"). Use apostrophes to omit figures. *Examples:* "The Supreme Court wrote the decision in '01."

Use apostrophes to omit "of" in dates. *Example:* "He was released after 25 years' imprisonment."

Never use an apostrophe for pronouns that express ownership. *Correct:* "hers," "his," "its," "ours," "theirs," and "yours."

pronounced as a "y": "ill-in-oy," not "ill-in-oise."

Don't use an apostrophe "s" after a plural possessive ending in a sibilant. *Incorrect:* "The courts's rules require 15 copies." *Correct:* "The courts' rules require 15 copies."

Pluralize a proper noun ending in a sibilant by adding an "es." *Correct:* "The Fishes" (members of the Fish family). Form the plural possessive by adding an apostrophe after the "es." *Example:* A book that belongs to more than one Fish is "the Fishes' book," not "the Fish' book" or "the Fishes's book." *Incorrect:* "The Jones' house" or "the Joneses's house." *Correct:* "The Joneses' house."

Use an apostrophe "s" for possessive-case plurals. *Examples:* "daughters-in-law's," "fathers-in-law's," "mothers-in-law's."

Some nouns look like plurals and are pronounced like singulars but take no apostrophe, even when they're possessive. *Incorrect:* "United States's brief" or "United States' brief." *Correct:* "United States brief" or "brief for the United States."

Use an apostrophe "s" after a second singular proper noun to show unity. *Example:* "Joe and Bob's firm hired three new attorneys." (Joe and Bob work for the same firm.)

Use an apostrophe "s" after each singular proper noun to show disunity. *Example:* "Mary's and Jane's

CONTINUED ON PAGE 54

and for our veterans, but the holiday is everyone's holiday. "Daylight Saving Time" isn't possessive or plural.

12. Em and en dashes. An "em" dash ("—") is as wide as the capital letter "M" or sometimes longer, depending on the printer. In typing, the em dash is represented by two hyphens ("--"). An "en" dash ("–") is as wide as the capital letter "N." In print, an en dash is twice as wide as a hyphen ("-").

Use em dashes to emphasize. Em dashes are more emphatic than en dashes, colons, or parentheses. Parentheses are the least emphatic.

Em dashes set off abrupt changes in thought, interruptions, or supplemental explanations. If the change of thought, explanation, or interruption is in the middle of the sentence, add a closing em dash to signal the end of the change of thought, explanation, or interruption. What's enclosed between em dashes is an interpolated clause. *Examples:* "I submitted my brief — I believe it was Friday — to the court." "Accuracy, brevity, clarity, and honesty — these are virtues in legal writing." Use em dashes for emphasis. *Examples:* "The attorney charges \$525 an hour — the rate for the firm's partners — for complicated cases."

Use em dashes to set off a phrase that has commas within it. *Example:* "Call only the witnesses — such as Dr. White, Ms. Brown, and Mr. Tan — essential to your case." Use em dashes to list the source of a quotation after the quotation. *Example:* "Nobody has a more sacred obligation to obey the law than those who make the law." — Sophocles.

Insert spaces before and after em dashes in typing when the text is fully justified, when the text appears distorted, or in publishing. Otherwise, do what you want.

Use en dashes to separate dates, locations, and numbers. Think of the en dash as a substitute for "to" or "through." *Examples:* "Please turn to pages 15–16 of the trial transcript." "After I left the courthouse, I went

to the Buffalo Sabres–New York Islanders hockey game." "From 2004–2006, my client endured a hostile work environment." "The judge has Czechoslovakian–Romanian roots." "Plaintiff–appellee requests that the Fourth Department's decision be reversed." "This morning, I took the Albany–Syracuse flight."

In this example, the hyphen, en dash, and em dash are used correctly: "Ms. Smith–Jones spent five minutes reading the Finkestein–Ferrara text on landlord–tenant practice — and promptly fell asleep."

In WordPerfect: To insert an en dash, put your cursor at the text where you want to insert the en dash. Go to "Insert," then "Symbol," then "Typographical Symbols." The en dash is the symbol on the seventh line, third from the left (keystroke number 4,33). When you click "Insert and Close," the en dash will be inserted in the text where you've left your cursor. To insert an em dash, put your cursor in the text where you want to insert the em dash. Go to "Insert," then "Symbol," then "Typographical Symbols." The em dash is the symbol on the seventh line, fourth from the left (keystroke number 4,34).

In Microsoft Word: To insert an en or an em dash, put your cursor in the text where you want to insert the en or the em dash. Go to "Insert," then "Symbol," then "Special Characters." Click the first option, "Em dash," to insert an em dash or the second option, "En dash," to insert an en dash in your text.

Depending on how you've programmed your computer for WordPerfect's autocorrect feature, you can also create an en dash by tapping your keyboard hyphen key twice and then the space bar once. Create an em dash by tapping your keyboard hyphen key three times and the space bar once.

13. Slashes. Use slashes for "per." *Examples:* "James Roe, a partner in the firm, charges \$525/hour." "The defendant traveled at 85 mi./hr." Use slashes in fractions: "20 3/4 inches."

Use slashes to divide one line of verse from the next in text; use a space

before and after the slash. *Example:* "Some are born great, some / achieve greatness, and some have greatness thrust upon 'em."⁶

Use slashes to separate equally applicable terms. *Example:* "A minor's parent/legal guardian must be present during interrogation."

Use slashes to separate parts of a date in informal writing: "3/6/07."

Use slashes to set off things like "a/k/a" ("also known as"), "d/b/a" ("doing business as"), or "c/o" ("in care of"). *Correct:* "Robert Jones a/k/a

Em dashes are more emphatic than en dashes, colons, or parentheses.

Bobby Jones." "Johnny's Club d/b/a Johnny's Rock and Roll Bar." Putting a comma before "a/k/a," "d/b/a," or "c/o" is acceptable. *Example:* "Robert Jones, a/k/a Bobby Jones." "Johnny's Club, d/b/a Johnny's Rock and Roll Bar."

Don't use a slash for "and/or." Use only "or" if the conjunction is disjunctive: if it separates two or more options. *Example:* "I'm taking Legal Writing on a pass-or-fail basis." Use only "and" if the connection is conjunctive: if it joins and combines two or more options. If the phrase is disjunctive and conjunctive, write "x or y or both" or "x, y, or both." *Example:* "A defendant found guilty of driving while intoxicated may be sentenced to jail, a fine, or both."

Don't write "she/he/it" to make your writing gender-neutral.

14. Ellipses. Use ellipses to omit words from a quotation.

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 the 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.

According to the Tanbook, use brackets “[]” to indicate that language has been added or modified.⁷ If the bracketed language replaces omitted language, don’t use ellipses.⁸ If you’ve omitted internal quotation marks, case citations, footnotes, or endnotes, note that omission in a parenthetical, not with ellipses. *Example:* The court found no illusory tenancy. (See *Plaintiff v Defendant*, 50 AD2d 50, 50 [5th Dept 2009] [citation omitted].)⁹

According to the Bluebook, use “a parenthetical clause after the citation to indicate when the source quoted contains any addition of emphasis, alteration to the original in the quoted text, or omission of citations, emphasis, internal quotation marks, or footnote call numbers.”¹⁰ *Example:* *Plaintiff v Defendant*, 99 N.Y.S.2d 500, 511 (3d Dep’t 2009) (finding that plaintiff was not closely related to victim) (internal quotation marks omitted).

Never use ellipses before a quotation. You’re already telling the reader you’re omitting something by how you introduce your quotation. *Incorrect:* “. . . the parties submitted post-trial briefs.” *Correct:* “[T]he parties submitted post-trial briefs.”

To omit words from the end of a sentence, insert the correct punctuation to end the sentence, and then insert the ellipses. *Original quotation:* “This morning, the parties in *A v. B* submitted briefs and argued the motion. By the afternoon, the judge issued a decision.” The following is incorrect because it doesn’t include ellipses to show omission: In the “morning, the parties in *A v. B* submitted briefs.” *Correct:* In the “morning, the parties in *A v. B* submitted briefs . . .” *Omission from the middle of a sentence:* In the “morning, the parties . . . submitted briefs and argued the motion.”

Example 1: Omission from the end of a sentence: After the parties “submitted briefs and argued the motion. . . . the

judge issued a decision.” *Example 2: Omission from the end of a sentence:* Last week, “the parties in *A v. B* submitted briefs” The ellipses in these examples might look the same, but the spacing is different. In the first example, the writer must include the period from the original quotation directly after “motion” and then insert ellipses (with a single space between them). In the second example, the writer extracts a portion of the sentence, not including the original period.

Pre-2004 Tanbook style required asterisks instead of ellipses to show omission. The Tanbook no longer allows asterisks.

Don’t use ellipses instead of dot leaders in a document’s table of contents or table of authorities.

To create dot leaders on WordPerfect, go to “Format,” then “Line,” then “Flush Right with Dot Leaders.” The dot leaders will appear immediately after the place at which you’ve placed your cursor.

In Microsoft Word pre-2007 versions, go to “Format,” then “Tabs.” A screen will pop up. Under the “Tab stop position,” type “6” so that the dot leaders are positioned six inches from the left-hand margin. Click on “Right” under “Alignment” and “2” under “Leader.” Hit “OK.” Return to your document. Immediately after the text (where you want to insert the dot leaders), hit the “Tab” key on your keyboard to insert the dot leaders.

In Microsoft Word 2007 version, go to “Home,” then “Paragraph.” Once the “Paragraph” screen opens, press the bottom key, “Tabs.” Follow the directions set forth above for Word pre-2007 to insert the dot leaders.

The easiest way to create a table of contents or a table of authorities in WordPerfect is to go to “Tools,” then “Reference,” then “Table of Contents” or “Table of Authorities.” In Microsoft Word (2007 version), the easiest way is to go to “Reference,” then “Table of Contents” or “Table of Authorities.”

15. Accent marks. Use accent marks in names. *Examples:* “Aimée,” “André,” “Béatrice.”

Use accent marks if they are in current English usage. *Examples:* “cliché,” “divorcée,” “fiancé” (male), “fiancée” (female). Use accent marks if the English word means something other than the one intended. *Example:* “résumé” as opposed to “resume” (resume).

In Microsoft Word (2007 version): To insert an accent mark, put your cursor at the text where you want to insert the accent mark. Go to “Insert,” then “Symbol,” then “More Symbols.” Choose font: “normal text.” Choose subset, for example “Arabic,” “Basic Latin” (which includes French and Spanish), “Cyrillic,” “Greek and Coptic,” “Hebrew.” With your mouse, click on the accent mark or accented letter of your choice.

In WordPerfect: To insert an accent mark, put your cursor at the text where you want to insert the accent mark. Go to “Insert,” then “Symbol,” then set the symbol to “Multinational.” With your mouse, choose the corresponding accent or accented letter.

In the next column, the Legal Writer will discuss legal-writing controversies. ■

GERALD LEBOVITS is a judge of the New York City Civil Court, Housing Part, in Manhattan and an adjunct professor at St. John’s University School of Law. He thanks court attorney Alexandra Standish for researching this column. Judge Lebovits’s e-mail address is GLebovits@aol.com.

1. New York Law Reports Style Manual (Tanbook) R. 11.1 (a), at 77 (2007), available at http://www.nycourts.gov/reporter/New_Styman.htm (html version) and <http://www.nycourts.gov/reporter/NYStyleMan2007.pdf> (pdf version) (last visited Dec. 11, 2007).
2. The Bluebook: A Uniform System of Citation R. 5.1(b)(i), at 69 (Columbia Law Review Ass’n et al. eds., 18th ed. 2005).
3. Bluebook R. 5.1(a)(i), at 68.
4. Association of Legal Directors (ALWD) Citation Manual R. 47.4(a), at 341 (3d ed. 2006);
5. ALWD R. 47.5(a), at 344.
6. William Shakespeare, Twelfth Night act 2, sc. v.
7. Tanbook R. 11.1(d), at 78.
8. *Id.*
9. *Id.* R. 11.1(c), at 78.
10. Bluebook R. 5.2(d), at 69-70.