

The Scrivener: Modern Legal Writing



Quotations Part I: Fundamentals

by K.K. DuVivier

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Legal analysis relies heavily on the words of others. The impulse to repeat verbatim the words of applicable authorities is often compelling. While an authority may be integral to your discussion, quoting lengthy passages actually may interfere with your message. This column addresses quotation fundamentals—when and how much to quote. Part II, in the September 1993 column, will address the use of block quotations and some techniques for making them more effective.

The basic rule for legal quotations is to quote *only* language that in itself merits attention. When the focus of your analysis is the interpretation of a statute or a contract, certainly the exact language of the statute or contract itself merits attention. The best starting point for such a discussion is often a quotation of the relevant statutory or contractual provisions.

Use quotations more sparingly when addressing case law. Specific language of the common law merits attention only if the words constitute terms of art or if the phrase reappears and becomes the standard that the writer uses to apply to the facts of the case.

Words from legal authorities, whether from a statute, a contract or the common law, do not merit attention unless they apply to the issue being discussed. Repeat the exact words quoted to show how they relate to your problem. Here is a short example created to illustrate the application of quoted terms to some hypothetical facts:

The seller's personal telephone calls to recruit club members should qualify as "advertisement[s]" under the Colorado Consumer Protection Act. The definition of "advertisement" under the Act includes an "attempt [to induce another to enter into a contract] by . . . solicitation . . . visual, oral, or written. . . ." Colo. Rev. Stat. § 6-1-102(1) (1992).¹ Thus, even though the seller never published a

written version of its offer, it is difficult to argue that the telephone calls do not constitute oral solicitation.

It is the writer's job to find the essential words in the applicable authorities. The quotation marks isolate and emphasize key words, while nonessential words can be muted by concise paraphrasing. If more than the essential words are quoted, the quotation loses impact. Instead of being stressed, essential words are lost in the din.

There are at least three reasons why legal writers should only rarely use quotations of more than a few words. First, back-to-back use of quotations encourages skimming. Many readers find "the perceived value of the quotation rarely outweighs the tedious business of finding the juicy words hidden within it."² Do the work for your readers; edit the quotations down to the essential words.

Second, a "paper littered with quotes is often disjointed."³ Longer quotations display the different writing styles of their various authors. Multiple quotations have the impact of a collage; the focus is more on the distinct pieces and the transitions than on the overall image. Don't let multiple quotations transform your argument into a crazy quilt. Incorporate quoted words grammatically into the uniform style of your sentences.

Finally, heavy reliance on quotations might be interpreted, correctly or not, as evidence of sloth. Quotations give the readers context, but leave to them the tasks of identifying essential words and making conclusions—tasks presumed to be those of the writer.

The emphasis of most legal briefs and memoranda is original analysis and application of legal authorities to support a conclusion. When undue space is allocated to quotations, this may indicate extensive research, but a superficial analysis. Quotation of only essential terms assures readers that the analysis adheres closely to legal authorities, but spares them the tedium of sorting through those authorities them-

DO YOU HAVE QUESTIONS ABOUT LEGAL WRITING?

K.K. DuVivier will be happy to address them through *The Scrivener* column. Send your questions to: K.K. DuVivier, University of Colorado School of Law, Campus Box 401, Boulder, CO 80309-0401.

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selves. The astute writer then culminates the analysis by showing the readers step-by-step how the essential terms apply and what conclusions must follow.

There may be times when your readers want to draw their own conclusions about authorities.⁴ In those situations, the cut-and-paste use of long quotations may be appropriate. The September column will address long quotations—their best uses and some abuses.

NOTES

1. This is *Bluebook* form for citing the Colorado Revised Statutes. A future column will address the different ways Colorado courts cite the statutes.

2. Neumann, *Legal Reasoning and Legal Writing* 232 (Boston, MA: Little, Brown and Company, 1990).

3. Shapo, Walter and Fajans, *Writing and Analysis in the Law* 154 (Westbury, N.Y.: Foundation Press, 1989).

4. For example, supervising attorneys may ask clerks to provide them with research, but wish to reserve the legal analysis for themselves. Also, some trial court judges appreciate having quotations in context because they often do not have the luxury of verifying sources. An alternative way to provide context is to attach a highlighted photocopy of the authority as an appendix to your brief. In this way, you need not clutter your brief with lengthy quotations and may instead focus on essential words and analysis.



REQUEST FOR PROPOSAL Court-Appointed Counsel

The Colorado Judicial Department is seeking proposals from attorneys to contract with the Department at a fixed rate as court-appointed counsel for indigent clients in Denver Juvenile Court, as guardian *ad litem* ("GAL") or counsel for respondent parents in dependency and neglect cases. The effective date of the contract will be September 1, 1993, through June 30, 1994.

Minimum qualifications are: three years' experience in Colorado courts handling civil cases, including being GAL and/or respondent parent attorney; current license to practice law in Colorado and proof of professional liability insurance; and a demonstration of sufficient support staff. Appropriate proposals are available from and can be submitted to:

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