

To Quote or Not to Quote

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Writers' Toolbox ... is a regular feature of Perspectives. In each issue, Professor Anne Enquist offers suggestions on how to teach specific writing skills, either in writing conferences or in class. Her articles share tools and techniques used by writing specialists working with diverse audiences, such as J.D. students, ESL students, and practitioners. Readers are invited to contact Professor Enquist at ame@seattleu.edu.

By Anne Enquist

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Of the many skills legal writers must have and hone, knowing what to quote and how to integrate quotations into a piece of writing is one of the most useful. Unskillful quoting creates clunky prose that reads like a cut-and-paste collage of other people’s words and ideas. Skillful quoting, by contrast, is a mark of an effective writer. The skillful quoter seamlessly meshes the author’s words with those of supporting voices. The blend seems natural, even effortless; the quote enhances rather than interrupts the writing’s smooth progression.

As legal writing professors, we are sometimes surprised that law students struggle with what and how to quote, but I suppose we shouldn’t be. As novices in the profession, some law students show their insecurity about what they are saying by over-quoting, which is a form of “playing it safe” by hiding behind the authority of the law. Others may show their lack of sophisticated analysis by picking the wrong things to quote. They are still groping

in the dark analytically and are unsure what to emphasize. And still others have not mastered simple things, such as when to use single and double quotation marks. Fortunately, a well-crafted lesson on quoting can fill in lots of these gaps and help students at the top, middle, and bottom of the class take the next steps in their development as writers and legal thinkers.

The key to teaching effective quoting is to organize several examples around a few principles.

Principle 1: Quote Only When Your Reader Will Want the Exact Wording from the Source

Legal readers want to see the exact language of statutes, regulations, municipal codes, constitutions, amendments—any language that is “the law.” Consequently, legal writers can rest assured that a direct quotation, not a paraphrase, is the right choice when they are setting out enacted law.

For example, quoting the exact language of the Antiterrorism and Effective Death Penalty Act (AEDPA) is an essential first step in an office memorandum about whether individuals violate the Act when they provide foreign terrorist organizations with humanitarian aid.¹ For the AEDPA memo example, the relevant subsection reads as follows:

§ 2339B. Providing material support or resources to designated foreign terrorist organizations

(a) Prohibited activities.

(1) Unlawful conduct. Whoever knowingly provides material support or resources to a

¹ Thanks to Professors Laurel Oates and Connie Krantz, who assigned the AEDPA memo and who, along with Professors Susan McClellan, Janet Chung, and Jessie Grearson, commented on this column.

foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 15 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life. To violate this paragraph, a person must have knowledge that the organization is a designated terrorist organization (as defined in subsection (g)(6)), that the organization has engaged or engages in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act [8 U.S.C.A. § 1182(a)(3)(B)]), or that the organization has engaged or engages in terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 [22 U.S.C.A. § 2656f(d)(2)]).

18 U.S.C.A. § 2339B (West, Westlaw® through Pub. L. No. 109-12).²

Just now, when you saw that long block quote, were you tempted to skip over it? Many readers are. Showing students a lengthy block quote and letting them experience their own reader reaction to it helps them see writing through the eyes of their readers. Once they identify with their readers, they will understand why, as writers, they need to think through how much of the Act to quote.

OK, so how much of the Act to quote? The answer is always the same: only as much as the reader needs. If the writer quotes too much of the Act, the reader is left with the tough job of hunting through a thicket of statutory prose for the parts that are relevant to the current issue. This is the writer's job. Through the judicious use of ellipses and brackets, the writer should trim the statute down in a way that focuses the reader's attention on what will matter in this case.

Section 2339B(a)(1) provides that “[w]hoever knowingly provides material support or resources to a foreign terrorist organization,

or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 15 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life. To violate this paragraph, a person must have knowledge that the organization is a designated terrorist organization . . . , that the organization has engaged or engages in terrorist activity . . . , or that the organization has engaged or engages in terrorism”

18 U.S.C.A. § 2339B (West, Westlaw through Pub. L. No. 109-12).

Principle 2: Use All the Quotation Devices—Ellipses, Brackets, “Emphasis Added,” the Formal Lead-In—Judiciously

Like any sharp tool, ellipses and brackets must be used with care. To make that point, have students compare a couple of ways a writer may have edited the statute: (1) the statute trimmed to what is relevant by selective use of ellipses and brackets; (2) the statute massacred or skewed by overuse of ellipses and brackets.

You may also want to include one or more versions that italicize, underline, or bold key words or phrases and include an “emphasis added” at the end of the citation. Once again, you can demonstrate both appropriate use and overuse of the “emphasis added” option.

Appropriate Use of Emphasis Added

Congress found that “foreign organizations that engage in terrorist activity are so tainted by their criminal conduct that any contribution to such an organization facilitates that conduct.” See *Antiterrorism and Effective Death Penalty Act of 1996*, Pub. L. No. 104-132, 110 Stat. 1214, 1247 (1996) (emphasis added).³

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² The students cited to the unofficial code because at the time they were writing their memos, the new language was not yet included in the official code. See *Bluebook* Rule 12.2.1 and the *ALWD Citation Manual* Rule 14.1(c).

³ Although the *Bluebook* seems to suggest (see examples for Rule 12.3.1) that a title of the statute is not italicized in situations such as this quotation, the *ALWD Citation Manual* Rule 14.7(h) says that it should be italicized.

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Overuse of Emphasis Added

Congress found that “foreign organizations that engage in terrorist activity are **so tainted** by their criminal conduct that **any contribution** to such an organization **facilitates that conduct.**” See *Antiterrorism and Effective Death Penalty Act of 1996*, Pub. L. No. 104-132, 110 Stat. 1214, 1247 (1996) (emphasis added).

With each version, ask your students how readers are likely to react. Excessive use of ellipses and brackets may make readers wonder if important things had been cut. Excessive use of emphasis added tends to make readers feel a bit browbeaten. Look at this, the writing screams, and this, and this! The goal is for students to learn to think through how readers may react to their choices, to see their writing through the eyes of their readers, and to develop good judgment about what those readers want and need.

Students will also need to see that Principles 1 and 2 apply to more than just statutory or regulatory language; legal readers may want to look at specific language in a lease, a contract, a letter, an e-mail, a corporate policy, or any other document that is at the heart of a legal issue. Similarly, it is often effective to quote exact language from a trial record, police reports, or witnesses’ testimony. Consequently, you may want to reprise the “what to quote” lesson when the class has moved from objective to persuasive writing.

The other half of Principle 1 is knowing what not to quote. In fact, for every student who does not understand the importance of quoting a statute, contract, or testimony, there seem to be two students who quote excessively. And it is not just that they include more of a statute or a cross-examination than they need. Excessive quoters include mundane language from court opinions that should be paraphrased, not quoted, and they are prone to including long quotations from law review articles that arguably provide helpful background but are more likely to wear on the patience of busy readers.

This is not to say that courts and law review articles should never be quoted. Sometimes they should be quoted, but more often than not, they should be paraphrased (and cited, of course). Here again, the trick is for students to develop judgment about what is quotable and what is not. And here again, examples from cases or secondary sources the students are using in their current assignment will generate a rich discussion of which words, phrases, and sentences can be effectively quoted and which are better paraphrased.

Start with a key case in front of them and ask questions such as, “Is there any language in the opinion that captures the essence of the court’s reasoning?” “What phrasing strikes you as particularly apt or memorable?” “Are there key words or phrases that later courts adopt, use, quote?” Ultimately what we really want students to know is the answer to the question, “What makes something quotable language?”

Another essential point in any quoting lesson concerns the mechanics of quoting. Most students have picked up some of this information along the way, but many are insecure about whether they are “doing it right.” Rather than leave this step to chance, consider having an explicit discussion about the two ways of including quotations in writing: (1) quotes that are formally introduced and (2) quotes that are structurally integrated into the writer’s sentence. Be sure the discussion includes specifics about how and where to place citations for both types of quotations, and be prepared for nitpicky questions such as whether to space between, as well as before and after, the periods in the ellipsis⁴ and when to use four periods.⁵

For both types of quotations, show a few examples of better and worse attempts⁶ and open the floor to discussing why they are more successful or less successful. For example, consider showing an

⁴ See *Bluebook* Rule 5.3 and *ALWD Citation Manual* Rule 49.2.

⁵ See *Bluebook* Rule 5.3 and *ALWD Citation Manual* Rule 49.4.

⁶ You may want to use real student examples for the effective versions and write representative ineffective ones yourself.

example of a formally introduced quotation that does little more than insert the quote into the text with a “then the court said” lead-in. Contrast that example with several other examples of formally introduced quotes that are more skillfully executed, noting how the writer’s lead-in to the quotation prepares the reader for the quoted material, often foreshadowing what the reader should find significant in the quote.⁷

Formally Introduced Quotation—Weak Lead-In

A district court in the Eleventh Circuit said the following: “[T]he government must show that the defendant knew (had a specific intent) that the support would further the illegal activities of a FTO.” See *United States v. Al-Arian*, 308 F. Supp. 2d 1322, 1339 (M.D. Fla. 2004).

Formally Introduced Quotation—Improved Lead-In

A district court in the Eleventh Circuit construed § 2339B to require the same level of *mens rea* as § 2339A: “[T]he government must show that the defendant knew (had a specific intent) that the support would further the illegal activities of a FTO.” See *United States v. Al-Arian*, 308 F. Supp. 2d 1322, 1339 (M.D. Fla. 2004).

Adding an example of an overdone lead-in that virtually repeats the point in the quotation should help underscore the idea that each of the quotation devices—ellipses, brackets, emphasis added, and the formal lead in—can be ineffective if overused.

Formally Introduced Quotation—Repetitive Lead-In

A district court in the Eleventh Circuit said that under § 2339B the government had to prove that the defendant knew its support would further the FTO’s illegal activities: “[T]he government must show that the

defendant knew (had a specific intent) that the support would further the illegal activities of a FTO.” See *United States v. Al-Arian*, 308 F. Supp. 2d 1322, 1337–39 (M.D. Fla. 2004).

Principle 3: Quotations Should Mesh Naturally with the Writer’s Own Words

In your discussion of the second type of quotations, quotations that are integrated into the writer’s sentence, the most helpful tip you can share with your students is to read those sentences aloud. If the students do, they will hear when the structure of their sentence does and does not mesh with the structure of the quotation. When a quotation is skillfully integrated into the writer’s sentence, someone listening to the sentence read aloud should not be able to tell when the writer’s own words ended and the quoted material began. The desired effect is a natural integration of both content and sentence structure.

Structurally Integrated Quotes—Ineffective Blend

The current definition of “material support” is “(1) the term ‘material support or resources’ means any property . . . or service, including currency or monetary instruments . . . , lodging, training, expert advice or assistance, . . . communications equipment, facilities, weapons, lethal substances, explosives, personnel . . . , and transportation, except medicine or religious materials” 18 U.S.C.A. § 2339A (West, Westlaw through Pub. L. No. 109-4).

Structurally Integrated Quotes—Effective Blend

The court in *HLP* presumed that Congress intended § 2339B to have a broad reach, regardless of a violator’s intent, because “giving support intended to aid an organization’s peaceful activities frees up resources that can be used for terrorist acts.” See *id.*

The court might allow the donation of humanitarian aid on policy grounds because groups designated as FTOs “often do much more than commit terrorist acts. They also

“The desired effect is a natural integration of both content and sentence structure.”

⁷ If one of your examples of formally introduced quotations is 50 words or more, that example will create a natural opportunity to mention the rules about single spacing and indenting block quotations, placing the citation, and omitting the quotation marks. See *Bluebook* Rule 5.1 or *ALWD Citation Manual* Rule 47.5.

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undertake important and worthwhile charitable, humanitarian, educational, or political activities.” Randolph N. Jonakait, *The Mens Rea for the Crime of Providing Material Resources to a Foreign Terrorist Organization*, 56 Baylor L. Rev. 861, 870 (2004).

As with the earlier examples of formally introduced quotations, be sure to insert quick lessons about how to cite when a quotation is integrated into the writer’s own sentence structure. Include at least one example in which the citation applies only to the first part of the sentence. This type of example will allow you to discuss how to correct the common error of placing the citation at the end of the sentence when the citation does not support the whole sentence.

Incorrect—Citation Supports Only the First Half of Sentence

While one commentator has noted that “[c]haritable giving will have taken on previously unknown risks,” the government will argue that donors have no way of knowing how a foreign terrorist organization will use any given donation. Jonakait, *supra*, at 873.

Corrected

While one commentator has noted that “[c]haritable giving will have taken on previously unknown risks,” Jonakait, *supra* at 873, the government will argue that donors have no way of knowing how a foreign terrorist organization will use any given donation.

The “principles plus examples” approach, particularly when the examples come from the students’ current assignment, is a surefire way to keep students engaged while conveying foundational concepts that can be applied to other writing projects. Some professors may prefer the inductive version of the approach—discuss the examples from which the class then draws the principle—and others may feel more comfortable with the deductive version—here’s the principle, now let’s see how it applies in these examples. Either way, students will immediately see how they can use what they are learning and enjoy taking the quoting skills they brought with them to law school to the next level.

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Another **Perspective**

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