

# New Jersey Law Journal

VOL. CLXXXIII – NO. 9 – INDEX 20

MAY 29, 2006

ESTABLISHED 1878

## Take Control of Your Quotations, Don't Let Them Control You

Delete or substitute for words that are awkward or may confuse

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When we were sent to the encyclopedias in grade school, we were told that verbatim copying was verboten. Our reports had to contain our own ideas (of which we had none) and “our own words.” Nobody thought of quoting from a source because that would only announce the crime. We were years away from being able to synthesize a thought in our own words and use quotations merely as accents.

Teachers spoke of “plagiarizing” — an obscure term (to a 9-year old), reeking of pestilence and intended to intimidate. The gist of the offense as we understood it was the failure to use our own words. As a consequence, those of us afraid of getting caught labored in frustration to rewrite perfectly good sentences crafted by writers far better with words than we on subjects about which we knew essentially nothing.

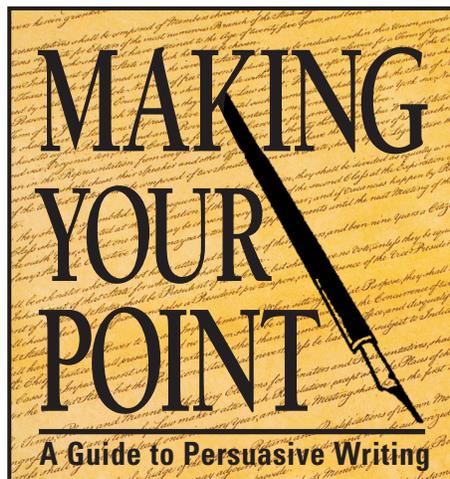
I am not sure what these trips to the library accomplished other than deeply ingraining a distaste for paraphrasing that took a long time to overcome. Couple this with the reverence I had as a young lawyer for judges' words, and I

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was prone to quote whatever a court said, whether I fully understood it or not.

If you see this tendency in yourself, give special attention to what you intend to quote.



Suppose, for example, that you wish to establish the principle that a court will fill in gaps in a contract, and thus bind the parties, if the court concludes that the parties truly intended to make a deal. The quotation you like from a judicial opinion reads as follows:

Courts will not scruple at filling gaps in a contract or interpreting ambiguous terms if there is evidence of a manifestation of assent to enter into a bargain.

You believe the quotation makes your point — that courts will fill in gaps in contracts and bind the parties if the parties clearly intended to be bound. You prefer to use the quotation verbatim rather than paraphrase it because you like the word “scruple” — it’s firm and sharp, and it smacks of moral rectitude.

You also figure that courts make points more succinctly than you, and even though you aren’t 100 percent sure what “will not scruple” means, at least it sounds impressive. You want to invoke morality and take the high ground.

Notwithstanding the connotative virtues of “scruple,” “courts will not scruple” is almost certain to lead readers astray. The phrase sounds like, or suggests, “will not have scruples,” which would mean, in this context, “will cynically maneuver or manipulate.” This is hardly your point.

Eventually, a reader will realize that a court is not likely to state that other courts maneuver and manipulate, and the reader will see from the context that the court must have been using scruple to mean something like “hesitate” (“The court will not hesitate to fill in gaps.”). Nevertheless, the reader will be confused, at least for a moment.

In persuasive legal writing, the reader’s confusion is a serious concern.

Let’s edit the passage. Change the phrase “will not scruple at” to “will not hesitate to,” dropping the fancy

word to remove the ambiguity. A collateral advantage of this revision is that you substitute strong verbs (fill and interpret) that take direct objects (gaps and terms) for a passive “-ing” approach (will not scruple at filling...or interpreting). The revised sentence reads as follows:

Courts will not hesitate to fill gaps in a contract or interpret ambiguous terms if there is evidence of a manifestation of assent to enter into a bargain.

Naturally, you cannot place quotation marks around the entire sentence once you have changed several words. Nor would you place quotation marks ahead of “ambiguous” because it would interrupt the flow:

Courts will not hesitate to fill gaps in a contract or interpret “ambiguous terms if there is evidence of a manifestation of assent to enter into a bargain.”

Misplaced quotation marks are like misplaced commas — they interrupt the flow because they disappoint the reader’s grammatical expectations. Quotation marks work best around grammatical units, whether words, phrases or clauses, in sympathy with the reader’s hard-wired reactions to grammatical forms.

The flow is not interrupted if you place the quotation marks in front of “if”:

Courts will not hesitate to fill gaps in a contract or interpret ambiguous terms “if there is

evidence of a manifestation of assent to enter into a bargain.”

The quotation marks now encompass a grammatical unit — the “if” clause.

You can probably guess what I’ll recommend next. I would not quote any portion of this sentence because I don’t like the “there is” construction; I don’t like the ponderous phrase “evidence of a manifestation of assent”; and I prefer “intent” to “assent.” I would rephrase the back end of the sentence to something like this: “... if the parties have manifested their intent to enter into a bargain”:

Courts will not hesitate to fill gaps in a contract or interpret ambiguous terms if the parties have manifested their intent to enter into a bargain.

I am not concerned about losing the opportunity to quote. The paraphrase is accurate. Not only will it survive scrutiny, but its validity will build trust if the reader checks the source.

Save your quotations for powerful words. Don’t quote just to avoid having to reshape the court’s language, and don’t quote bad or ambiguous writing, even if you are desperate to quote authority. If you feel you must quote something from an opinion as a show of strength or to prove you aren’t making it up, reduce the size of the quotation, even down to a word or two, until you are no longer featuring bad prose.

## **Puzzler**

What is wrong with the following

sentence?

Lacking expert testimony to make a case regarding causation, the court granted summary judgment against plaintiff.

This sentence includes a “dangling participle.” The participle is the word “lacking,” which is the “-ing” form of the verb “lack.” Participles modify (describe) nouns. The participle dangles because it doesn’t clearly describe one particular noun, in this case, either the court or the plaintiff.

Though the plaintiff, not the court, failed to produce expert testimony on the subject of causation, on first look the court appears to be the one lacking expert testimony (“lacking expert testimony...the court granted”). In other words, the court appears to be the “antecedent” of the participle “lacking.” (Even though the prefix “ante-” means “prior to,” an antecedent can either precede or follow its referent.)

You can’t shorten the sentence much because you need a reference to the plaintiff, a verb describing what plaintiff did or didn’t do, the concept of summary judgment, the absence of an expert, and a reference to causation. In the alternate version, “establish” is tighter than “make a case regarding.”

The new version:

The court granted summary judgment because plaintiff presented no expert on causation.

Alternate version:

Lacking an expert to establish causation, plaintiff lost on summary judgment. ■