



## Litigation Practice Tip - November 2020

**The use of quotations in briefs: the more, the better, but keep them short.**

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To test whether their students really understand the material, legal writing professors often instruct the students to paraphrase rather than quote from statutes and opinions. That may work in the classroom. But if your audience is a court, there are two reasons why you should master the art of the short quotation:

- **Credibility: don't tell me, show me.** A strong quote shows the reader what the source text says much better than a summary. When I read an opposing brief that quotes from an opinion, while I may evaluate whether the opinion really hurts my case, I don't doubt the accuracy of the quotation. Attorneys rarely misquote deliberately. But if the opposing brief merely summarizes what the attorney claims the opinion stands for, my first reaction is "maybe it does and maybe it doesn't." With some opposing counsel, it's at best a coin flip. Judges presumably think the same way. If you show them with a concise quote you are right rather than effectively asking them to take your word for it until they have time to read the case, they are more likely to have a good first impression of the merits of your argument. And first impressions often carry the day.
- **Effectiveness: memorable language matters.** As eloquent as we all think we are, sometimes we need to admit that an opinion says it better. Or at least, says it in a different and memorable voice. Suppose you are seeking an order requiring an agency to achieve a legally required goal for public benefits recipients without specifying how that has to happen. Which do you think is more effective:
  - "While agencies may exercise discretion in how they perform their mandatory duty, the Court may order them to exercise that discretion."
  - or
  - "While agencies may exercise discretion in how they perform their mandatory duty, 'ignoring the recipients' rights and doing nothing is not an option.'  
*Conlan v. Bonta*, 102 Cal. App. 4th 745, 764 (2002)."

Or consider this excerpt from a brief arguing for relief from an attorney's calendaring error: [T]he Supreme Court's analysis in *Zamora v. Clayborn Contracting Group*, 28 Cal. 4th at 258-60, establishes that "clerical or ministerial mistake[s] that could have been made by anybody" are excusable under the reasonably prudent person standard, whether "made by an attorney or his or her staff."

As the notion of mistakes "that could have been made by anybody" was key to the

argument, it was important that the Supreme Court used those exact words.

**Keeping quotes short: why and how.** While good quotes from statutes and opinions are important to a brief, it is equally critical that you keep them as short as possible. A Ninth Circuit judge once wrote: “when I read a page-long block quote in a brief, I immediately feel sorry for the attorney. Something must have gone horribly wrong with her word processor.” You don’t need to be a writing expert to know that nobody can actually read all the way through a long block quote; **just try to do it yourself**. So what are your alternatives if you have what you conclude is a good long quotation?

- First, read through the quotation to determine which words or sentences are really necessary either for context or to make your point, and prune those that are not. The sentence, “Apples, notwithstanding defendants’ arguments made in their July 4, 2021 motion to dismiss, are not oranges” can be shortened to “Apples . . . are not oranges.”
- If, after pruning, the quote is still too long, break it up. After quoting one or two short sentences from the opinion, then say something like: “The court then reasoned that [continue quote]”

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Contact **Western Center** for answers to any questions you may have about quotations or any other aspect of brief-writing.

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For questions or advice, please reach out to Richard Rothschild at **rrothschild@wclp.org**.



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