

The Importance of Accurate Quotations

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Law students learn certain basic rules of professional conduct early in their studies. Lawyers may not knowingly present false evidence. Lawyers may not knowingly make a false statement of fact. Lawyers do try to state facts in the light most favorable to the client. Lawyers have a duty to cite to the court adverse precedent directly on point. Lawyers do try to show how the law supports their client's position.

There are limits, though, at which zealous advocacy ends and deceit begins.

In a recent case, a trial court reprimanded a lawyer who submitted a motion in which she quoted from two cases, omitting language from one of the quotations – which changed the meaning of the quoted language – and omitting from her quotations a citation to a case adverse to her argument.

During the proceedings before the trial court judge (the Court of International Trade) in *Precision Specialty Metals, Inc., v. United States*, 315 F.3d 1346 (Fed. Cir. 2003), the government requested an extension to respond to the opposing party's motion for summary judgment. The request was made after the close of business the day before the response was due. The court directed the government to submit the response "forthwith." The government filed the response 12 days later. The court then struck the response as untimely and granted the motion as unopposed.

The government filed a motion for reconsideration, contending that the government's response had been filed "forthwith." In support, it quoted a sentence from a 2nd U.S. Circuit Court of Appeals decision which defined "forthwith" as "immediately, without delay, or as soon as the object may be accomplished by reasonable exertion." Omitted, however, was the very next sentence of the opinion, quoting *Dickerman v. Northern Trust Co.*, 176 U.S. 181 (1900), wherein the Supreme Court stated that in matters of civil procedure "forthwith" usually means within 24 hours.

The lawyer also quoted from a dissent by Justice Clarence Thomas in *Henderson v. United States*, 517 U.S. 654 (1996). The lawyer quoted Thomas as stating, "Although we have never undertaken to define 'forthwith' . . . , it is clear that the term 'connotes action which is immediate, without delay, prompt, and with reasonable dispatch.'"

In fact, Thomas actually stated, “we have never undertaken to define ‘forthwith’ as it is used in the SAA [Suits in Admiralty Act].” The lawyer also put a portion of the quotation in bold type without indicating that she had supplied the emphasis. To compound matters, the lawyer omitted the next sentence of Thomas’ opinion, which like the prior quotation omitted the citation to *Dickerman*. See *Precision Specialty Metals*, 315 F.3d at 1348-49.

The trial court judge found that the lawyer had violated Rule 11 of the Rules of the Court of International Trade (identical to rule 11 of the Federal Rules of Civil Procedure). The Federal Circuit Court of Appeals affirmed.

The appellate court stated that the government lawyer violated Rule 11 “because, in quoting from and citing published opinions, she distorted what the opinions stated by leaving out significant portions of the citations or cropping one of them, and failed to show that she and not the court had supplied the emphasis in one of them.”

The court further stated, “The effect of [the lawyer’s] editing of this material and ignoring this Supreme Court decision that dealt with the issue – a decision that seriously weakened her argument, was to give the Court of International Trade a misleading impression of the state of the law on the point.”

In essence, the lawyer altered quotations in ways that hid adverse authority and changed the quotations’ overall meaning. This is different from simply de-emphasizing, which involves acknowledging the adverse language and then explaining that language away. Changing the meaning through physical distortion or omission of the words actually used is not zealous advocacy, but deceit.