By Mark Cooney

Stringing Readers Along

Legal professionals love to hate string citations, and critics have no shortage of reasons to view them with contempt.

String cites disrupt the flow of the text and burden readers.[1] "Where," readers ask themselves, "does that confounded string cite end and the text resume?" And legal writers often overuse the technique, incessantly citing multiple authorities for basic propositions that could be amply supported by a single authority.[2] This can undermine a document's readability.

Heavy reliance on string cites can also create substantive defects in briefs. Some lazy writers seem to believe that string cites can replace actual legal analysis. That's a mistake. "String citations followed by the same tired question-begging bromides do not, after all, constitute legal reasoning."[3] When an argument is supported by nothing but a string cite, the court may consider that argument waived.[4]

And what's bad style for lawyers is bad style for judges. It's therefore no surprise that one federal appellate judge urged other appellate judges to "doff the security blanket that writers weave with string citations."[5]

Yet string cites are seemingly here to stay. Legal writers continue to use them despite their shortcomings. If you're convinced that a strategically placed string cite will add value to your document, at least be aware of the pitfalls. Below are some things to think about, along with a few tips on how to avoid frustrating your reader.

Use String Cites Sparingly

At the outset, remember that string cites are generally unhelpful and unwelcome.[6] Lawyers and judges should not strive to make this technique a staple of their legal-writing repertoires. String cites should be the exception—not the rule. "For obvious threshold matters that require no elaboration, don't string cite at all. One good cite is good enough."[7] And don't use string cites just to prove your researching prowess.[8]

Recognize That String Cites Aren't Analysis

An unruly conglomeration of surnames, numbers, abbreviations, and dates is not the same thing as legal analysis.[9] If you think it's essential to use a string cite, use it to *buttress* a solid analysis of the law, not to supply your analysis. As noted above, courts have reacted harshly to briefs written as if long string cites can replace a meaningful discussion of the relevant law and how it applies to the facts.

Use String Cites Only for a Good Reason

Use a string cite only when it's "essential."[10] Or at least be sure that it adds enough value to justify it. By definition, string cites contain cites to multiple authorities. So lawyers should use string cites only when it's important to give the reader multiple authorities for a single point of law.[11] For example, a lawyer might use a string cite to prove that the appellate courts in a jurisdiction have consistently taken one view.[12] A lawyer might also use a string cite to show the majority view or an emerging view among national courts.[13] A lawyer trying to show a split between federal appellate circuits might use string cites to show which circuits have taken one position and which circuits have taken the contrary position.[14] But if you don't need to cite to multiple authorities to back up a statement, cite to a single authority. "Citing for completeness rather than to make your point" is disfavored.[15]

Include Helpful Parenthetical Explanations

Include a brief parenthetical explanation for each case cited within a string cite. Courts and commentators have observed that "[s]tring citations without explanatory parentheticals are rarely helpful."[16] And readers who are suspicious of bare cites may be put off by writers who put the onus on the reader to discover what the cases really said.[17] When you include parenthetical explanations, your reader doesn't have to look up the cases to get a flavor for what each one adds to the discussion. Again, though, try to keep the parenthetical notes brief.

Consider Putting String Cites in Footnotes

If you've decided to include a string cite in your document, consider putting it in a footnote. Some legal-writing experts, most notably Bryan Garner, have made persuasive arguments for putting *all* citations in footnotes, not just string citations.[18] One advantage of using footnotes for citations, proponents say, is that "the whole debate over string citations becomes moot"—lawyers and judges taking this approach can "[u]se string citations with impunity."[19] Others counter that footnotes can themselves become a distraction for readers.[20] I won't try to settle that debate here. Perhaps I can borrow an idea from the Honorable Richard A. Posner and offer a middle ground of sorts: given that string cites invariably disrupt the flow of the text, there's a strong argument for putting them in footnotes regardless of where you put the rest of your cites.[21]

If you reject the footnote approach and choose to leave your string cites in the text, consider some other techniques to help your reader.

Keep Them Short

If you decide to put a string cite in the text, try to keep it short so that it's manageable for your reader.[22] Try to "[l]imit string citing to three cases except when you must document the sources necessary to understand authority or a split in authority."[23]

Don't Interrupt the Text in Midparagraph

Readers have little patience for string cites that fall smack in the middle of long paragraphs, sandwiched between text. It can be very difficult for readers to discern when the string cite ends and the text resumes, especially if additional cites are interspersed in the text that follows the string cite. So how

can a writer using a string cite in the text avoid this problem?

One method is to create short, self-contained paragraphs for your string cites—just a topic sentence and the string cite itself. This way, the reader can get the main point from your topic sentence, quickly review the string cite supporting that point, and then get a sense of closure at the end of the string cite. By ending the paragraph at the end of the string cite, the reader gets a clean visual break—and a well-deserved pause—before moving on to the next portion of the text. This isn't a perfect solution, but it saves readers from having to visually grope through long, run-on paragraphs in a desperate search for the lost text.

Here's an example of this technique:

> A growing number of jurisdictions have rejected the log-floatation test, opting instead to use the more modern recreational-use test to determine navigability. See, e.g., *Wisconsin v Kelley,* 244 Wis 2d 777, 789; 629 NW2d 601 (2001) (waterway is navigable if "conducive to recreational uses"); *Southern Idaho Fish & Game Ass'n v Picabo Livestock, Inc,* 96 Idaho 360, 362; 528 P2d 1295 (1974) (streams are navigable if capable of being floated by oar- or motor-propelled craft); *Baker v Mack,* 97 Cal Rptr 448, 451 (Cal App, 1971) ("modern tendency" is to hold that waterways capable of recreational use are navigable).
>
> Nevertheless, Michigan continues to apply the log-floatation test . . . .

Even if you include helpful parenthetical explanations, a strong topic sentence is important. It will serve as a helpful transition and will also give your reader a good feel for the "big picture" point that you intend to support with the string cite.

Read the Cases You Cite

Finally, whether you put your string citations in footnotes or in the text, be sure to read all the cases that you cite within the string cite. Don't just copy and paste string cites that you find in court opinions. Be sure that the cases are actually on point, and pick the best of the bunch.[24] If you don't take steps to ensure that each case cited is relevant, you risk alienating your reader and losing credibility.[25]

In summary, don't string your readers along by overusing string cites. Avoid them unless they're essential. And when you use them, think about these strategies for minimizing reader distraction. ◆

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FOOTNOTES

1. *People v Rivera,* 348 Ill App 3d 168, 177; 810 NE2d 129 (2004) ("[W]e see no point in cluttering the text of this opinion or burdening the reader with a lengthy string citation that would add little to our analysis."); Warner, *Cites for sore eyes: Case law analysis that works,* 41 Ariz Att'y 18, 20 (Dec 2004) ("Their writing is full of string citations that interrupt the flow of the argument."); see also Schultz & Sirico, *Legal Writing and Other Lawyering Skills* 312 (3rd ed, LEXIS 1998).
2. Lebovits, *Write the cites right—Part II,* 76 NY St B J 64, 64 (Nov/Dec 2004).
3. Rau, *The culture of american arbitration and the lessons of ADR,* 40 Tex Int'l L J 449, 456 (2005) (footnote omitted).
4. See, e.g., *McKevitt v Pallasch,* 339 F3d 530, 533 (CA 7, 2003); *In re Dillon,* unpublished opinion of the United States Court of Appeals for the Fifth Circuit, issued May 23, 2005 (Docket No 04-41307).
5. Selya, *In search of less,* 74 Tex L R 1277, 1279 (1996).
6. Byington, *How to make your appellate brief more "readable,"* 48 Advoc 17, 18 (July 2005) (official Idaho Bar publication).
7. Lebovits, *supra* at 64.
8. Ray & Ramsfield, *Legal Writing: Getting it Right and Getting it Written* 63 (4th ed, Thomson/West 2005).
9. See Schultz & Sirico, *supra* at 312.
10. Ray & Ramsfield, *supra* at 63.
11. *Id.*
12. Schultz & Sirico, *supra* at 312.
13. *Id.*
14. Lebovits, *supra* at 64.
15. *Id.*
16. Narko, *TREAC, the new IRAC—or why organization matters,* 18 Chi B Ass'n Rec 47, 47–48 (Oct 2004); see also *Beehive Tel Co v Public Serv Comm of Utah,* 89 P3d 131, 137 (Utah, 2004).
17. See Schultz & Sirico, *supra* at 312.
18. See, e.g., Garner, *The citational footnote,* 7 Scribes J Legal Writing 97 (1998–2000); see also, Painter, *30 tips to improve readability in briefs and legal documents or, how to write for judges, not like judges,* 31 Mont Law 6, 9 (April 2006).
19. Garner, *Clearing the cobwebs from judicial opinions,* 38 Ct Rev 4, 4, 12 (Summer 2001).
20. See, e.g., Posner, *Against footnotes,* 38 Ct Rev 24, 24 (Summer 2001).
21. *Id.* ("[A] judge who really thinks a very long string citation is necessary can put that string in a footnote without feeling obliged to put *all* his citations, or even the bulk of them, in footnotes.").
22. Charrow, Erhardt & Charrow, *Clear & Effective Legal Writing* 126 (3rd ed, Aspen 2001).
23. Lebovits, *supra* at 64.
24. Ray & Ramsfield, *supra* at 63.
25. *Id.;* see also Charrow et al., *supra* at 126.

Contest Winner

Last month, I offered a free copy of *Lifting the Fog of Legalese: Essays on Plain Language* to the first person who e-mailed me an unadorned A version of this beauty:

> ''Now comes Richard Penniman, hereinafter referred to as 'Penniman,' Third-Party Defendant in the above-styled and numbered action, and files this Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and in support thereof will respectfully show unto this Court as follows.''

The winner is Michael J. Gildner, of Simen, Figura & Parker, for this version:

> ''For his motion to dismiss, brought under Fed. R. Civ. P. 12(b)(6), Richard Penniman says.''

Assuming that the case is in federal court, you could probably even omit ''Fed. R. Civ. P.'' Thus:

> ''For his motion to dismiss under Rule 12(b)(6), Richard Penniman says.''

Almost 20 years ago, in the October 1987 column, we reported on a Michigan survey in which 84% of judges and 71% of lawyers preferred a plain introduction like those last two. So why continue to use the formulaic legalese?

The reasons for changing it—in fact, for avoiding it altogether—go even deeper than style. For one thing, the formalism typically does little more than repeat the document's title. What's more, you waste a valuable opportunity to provide an effective summary in your first paragraph or two. For a good discussion, see the November 2003 column, called ''On Beginning a Court Paper'' (available at www.michbar.org/generalinfo/plainenglish). And for more examples, see Bryan A. Garner, *The Winning Brief* 100–01, 477–78 (2d ed. 2004).

So the traditional opening is stuffy, unappealing to most readers, repetitious, and a lost opportunity. In the words of the legendary Richard Penniman (Little Richard), we should rip it up.