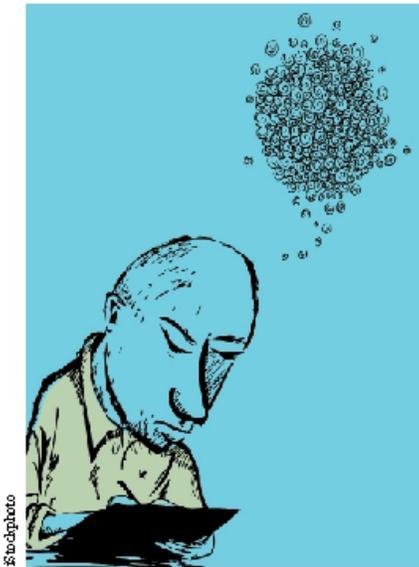


The Legal Writer

Notes on Quotes:

When and How to Borrow Language

By Rebekah Hanley



Contemporary legal writing tends to be overloaded with quotations. The excess probably reflects the ease with which lawyers can now cut text from online authorities and paste it into their own documents. But it also may reflect a belief that readers have a large appetite for direct quotations — that many quotations are necessary to avoid plagiarism or to show that an assertion has direct support.

That belief is unfounded. Legal readers dislike quotations — especially long quotations — so much that they often merely skim them and they sometimes skip over them entirely. And quotations are often unnecessary.

This column recommends an alternative to excessive quotation. That alternative allows legal writers to attribute credit properly where they rely on the ideas of others, both preserving credibility and demonstrating the strength of their arguments, and it is frequently more effective than a direct quotation.

That alternative is (drum roll, please) the paraphrase. Ralph Waldo Emerson is credited with saying “I hate quotation. Tell me what you know.” In other words, paraphrase.

The Recommendation and Its Rationale

Paraphrasing is often a better option than quoting in legal writing. Paraphrasing is incorporating someone else’s idea — including legal precedent — into your own writing by describing the idea and citing its source. But in describing the idea, you use your own words.

By paraphrasing, you can tell your reader the meaning and importance of the idea in the context of your own argument, rather than being locked, sometimes awkwardly, into the original author’s frame. You can improve upon the clarity of the original author’s text; you can make it simpler and more concise. And you can change the organization to better match the structure of your argument.

Paraphrasing rather than quoting — when appropriate and well done — should improve both your writing and your standing as a legal writer. Legal arguments that rely heavily on direct quotations do not tend to flow well because they borrow from numerous

authors who wrote about different subjects at different times and for different reasons. They can be choppy, repetitive and inconsistent as a result. They can also make the writer appear lazy; cutting and pasting sound bites from Westlaw requires much less creativity, time and effort than understanding and reducing the essential meaning of the original material. When in doubt, do your writing, your reader and your reputation a favor: choose a paraphrase over a direct quote.

The Exception

Of course, directly quoting a source can sometimes help a legal writer support her argument. That happens when the source's exact language — not just its meaning — is important. In legal writing, the most obvious examples of quote-worthy language appear in contracts and enacted laws. A contract dispute will focus on the precise wording of a contract, so quoting the words is essential. Similarly, a dispute involving statutory interpretation will require a close reading of the law's text, so the reader will need that language to understand the arguments and analyze the issue.

Judicial decisions, secondary sources, fact documents and other sources can call for quotes as well. For example, quoting a common law test created by the state's highest court is wise. Quoting a short passage from a highly regarded law review article could help explain the analysis of a cutting edge issue. And quoting the exact words of a key witness might win a case.

When you quote a source, you are suggesting that there is something perfect and utterly irreducible about the way that source packages its message. You are telling the reader to focus on the particular phrasing in the quoted source because it is important to your legal argument. Readers trust that quoted material is critical. And they can feel misled and frustrated if they concentrate on specific language only to find out later that doing so was a waste. So quote only when you incorporate material that is "too precious to paraphrase."¹

The Line Between Quoting and Paraphrasing

The difference between quoting and paraphrasing is related to plagiarism, an unethical activity for both law students and practicing lawyers. Quoting is verbatim copying with quotation marks and attribution. Without proper punctuation and attribution, the same verbatim copying becomes plagiarism.

But plagiarism is not only verbatim copying; it is also mere imitation. Paraphrasing requires the creation of something new based on an existing idea, not the imitation of someone else's expression. In a true paraphrase, the writer does not rely on the original author's language at all. Rather, after reading the original author's work, the writer puts it aside and composes her own prose based on her understanding of the original author's idea.

There's no rule for how many words you can borrow from a source before you need quotation marks because borrowed language calls for quotes, period. A writer who tries to alter a quote just enough to avoid using quotation marks is plagiarizing. Relying on another's language in that fashion requires direct quotation.

A Few Rules for Quoting Effectively

Here are a few quotation rules that are most important (and most frequently violated) in legal writing:

1. Be accurate. Make every word in your quote an exact copy of the original. Misrepresenting what your source states undermines your credibility and is unethical. Even a simple modification that doesn't change the meaning — like omitting a comma or making a singular noun plural — makes you look sloppy.
2. Integrate quotations into your own text. Make the language of the quotation fit with your own writing. This blending will sometimes require you to alter the original language so that sentences that include quoted language are grammatical. (So long as you follow Rule #3 below, you may break Rule #1 above to incorporate quotations into your own prose.) It also means that you should not precede a quotation with a comma unless the grammar of the sentence requires it.
3. Indicate all alterations and omissions. Use ellipses to indicate omissions and brackets to indicate alterations. Consult a legal writing style manual for detailed instructions and examples.
4. Punctuate properly. A period or comma at the end of a quotation always appears inside the closing quotation mark. Colons and semicolons appear outside the closing quotation mark. Question marks and exclamation points go inside the closing quotation mark only if they are part of the quoted material; otherwise, they go outside. Note that if you are using MLA or some other style, punctuation rules may differ.
5. Be selective. Quote only when the reader needs to read the original author's language, and quote only key language. Over-quoting is distracting and disrupts the flow of your argument. Even some judges have publicly admitted that they do not read long quotations or collections of short quotations.
6. Explain. Make sure that the meaning of each quotation is clear. Do not paste quoted text into your document and expect the reader to discern the original author's idea or its relevance to your argument. Instead, write an introduction to the quotation that summarizes the quotation's meaning or explains its importance. The quotation that follows will then support that introductory

assertion. You can also follow up the quotation with additional explanation. Judges and other readers are not persuaded that an argument is well reasoned simply because its proponent has pasted quotations onto its surface. But where the ideas are woven into the fabric of the argument, the authorities truly strengthen it.

You can find more rules and tips about quoting in many resources, including these:

- Darby Dickerson, *ALWD Citation Manual* (4th ed., Aspen L. & Bus. 2010).
- Anne Enquist and Laurel Currie Oats, *Just Writing: Grammar, Punctuation, and Style for the Legal Writer* (3d ed., Aspen L. & Bus. 2009).
- Bryan A. Garner, *The Redbook: A Manual on Legal Style* (2d ed., Thomson/West 2006).

Endnote

1. This is, I believe, a perfect and utterly irreducible phrase that originally appeared in my article *Matters of Style, Matters of Opinion: The Voice and Legacy of Richard Chambers*, 19 W. Leg. Hist. 91, 113 (2006).

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