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When to quote, when to say it in your words

By Lisa Healy and Julie Baker

Write On is an occasional feature providing guidance for attorneys on writing legal memoranda and briefs.

Legal writers use material from other sources all the time. We refer to sample memoranda and briefs, convert research memoranda into pleadings and rely on precedent for the legal rules and analyses applicable to our cases. There is nothing wrong with any of this (provided the sources are properly attributed); the whole system of precedent is built on the idea of not re-deciding what has already been settled.

But when is it all right to do more than merely rely on or refer to sources and to actually quote their language as part of your analysis? The answer, as with all else in the law: it depends.

There are times when a passage from an authority will capture exactly the principle that you need, making it ripe for quoting. At other times, the passage may be more complicated or less directly applicable to your case than would be your own statement or paraphrase; and, almost always, one piece carved from an opinion is not as effective without the rest of the case around it.

It is important to think about when and why you are quoting and to quote only when the language is so succinct and precise that it does a better job of stating the proposition than you, the writer, could do using your own well-chosen words.

Some points to consider:

- It is often useful to quote legal rules. These are the governing principles that have been established by the binding authorities in your jurisdiction. If you attempt to edit them or paraphrase them, you could change their meaning and wind up misstating the applicable rules in your case.
- It is less useful to quote the holding or reasoning from a court's opinion. Courts often take a long time to analyze an issue, but your job is to lay out the law concisely and precisely. Where you can reduce several paragraphs of discussion to a single sentence or two of explanation by using your own words, do so.
- Quote from treatises, law reviews and other secondary sources rarely, if at all. These materials are primarily explanatory, useful to gain background and understanding of the law and to locate applicable cases and statutes. Your readers want to read your analysis of the legal issue; don't just tell them what someone else has said.

It is also important to present quotations effectively. Blocks of text are unfriendly to readers, who tend to skim over them. Therefore, limit the length of your quotes. If a quotation contains fewer than 50 words, then you can simply enclose it in quotation marks and place it inside the text rather than setting it off in a block.

Finally, always introduce a quotation with your own statement of what the source said or what the court meant. That way, you are still the writer, and you are still telling the reader what the point is that you are making — with the quotation to support and assist you in most effectively making it.

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