

## QUOTING, PARAPHRASING, & PLAGIARIZING<sup>†</sup>

### in briefs and memoranda

As you read cases, law review articles, or (even) good journalism, pay attention to how competent authors use their sources. There are at least five ways an author can respond to the need to incorporate the information from any one source: the direct quotation, the “phrase that pays,” the altered quotation, the paraphrase, and plagiarism. All but the last are acceptable responses.

OBJECTIVE	RESPONSE	HOW?
<p>1. The passage is perfectly suited to your needs.</p>	<p><b>Direct Quotation</b></p> <p>(The source of the quotation <b>must</b> be cited.)</p>	<p>Quotation marks before and after quoted words. Terminal punctuation: commas and periods within, all else outside quotation marks. See Bluebook Rule 5.1.</p> <p><b>Caveat:</b> Quotes distract. This is a good thing, if you wish to emphasize. This is a bad thing used to excess, for it distracts and becomes visual clutter. Use direct quotation judiciously. Your reader should be drawn to it, not repelled by it, her eye leapfrogging lengthy or frequent quotations to get back to your analysis.</p>
<p>2. A key word, term of art, or phrase you wish to use throughout your document.</p>	<p><b>The “phrase that pays”</b></p> <p>(The source of the quoted phrase <b>must</b> be cited the first time, but need not be cited thereafter.)</p>	<p>Quote the phrase the first time, but assume the reader understands its importance thereafter. If much water has passed under the bridge before its next use, as could happen by the time the piece concludes, you may wish to revive the quotation marks.</p> <p><b>EXAMPLE:</b>  <b>[First reference]</b> The court held that defendant’s conduct was “privileged under the circumstances.” <i>Metropolitan Life</i>, 467 So.2d at 279.  <b>[Later reference]</b> In this case, defendant’s conduct was not privileged under the circumstances, because . . .</p>
<p>3. The passage is <i>nearly</i> perfectly suited to your needs, but requires some adaptation to fit your text.</p> <p>Why? You may wish to</p> <ul style="list-style-type: none"> <li>☞ omit part of the passage</li> <li>☞ change the tense of a word</li> <li>☞ condense the passage, as by replacing a phrase with a word</li> </ul>	<p><b>Altered Quotation</b></p> <p>(The source of the altered quotation <b>must</b> be cited.)</p>	<p><b>Keep</b> the quotation marks, but <b>Bracket</b> [ ] omissions of one character, as well as any other addition or substitution. Bracket, as well, a capital letter required by the grammar of the quoted phrase but absent in the original.</p> <p><b>Original:</b> “We all agreed that she finally kicked the buckets.”  <b>Alteration:</b> “[S]he finally kicked the [last] bucket[ ].”  <span style="float: right;">See Bluebook Rule 5.2</span></p> <p>Place an <b>ellipsis</b> ( . . . ) (space dot space dot space dot) where one or more words are excised (but not at the beginning of a sentence).</p> <p><b>Original:</b> “We could all see that she finally kicked the buckets.”  <b>Alteration:</b> “[S]he . . . kicked the bucket[ ].”</p> <p>Don’t forget <b>periods</b>. If the source sentence ends where you want it to end, no ellipsis. Just the original period.</p> <p>If you are quoting part of a sentence that, as quoted, <b>reads</b> as a sentence, yet ends later in the original, then insert an ellipsis where you choose to stop, then a period (after one more space). (See “relief” clause in the altered example below.)</p>

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<p>☞ modify the passage in some other minor way</p>		<p>Similarly, if the elided material includes the end of a sentence, indicate this with an ellipsis followed by a period. (See “relief” clause again.)</p> <p>The tricky part with an ellipsis is the space that follows the quoted passage. If no space follows the first clause quoted, the reader will assume that this is the end of a sentence. (See “bucket” clause in altered example below.)</p> <p>If a space <b>does</b> follow the first clause, however, the reader will assume that the original sentence continues after that clause. (See “relief” clause once more.)</p> <p><b>ORIGINAL:</b>  <b>“We were gratified to see that she finally had kicked the buckets. We’d been waiting all afternoon for her to get up the nerve, and it gave us no little relief that she sent those buckets flying at last.”</b></p> <p><b>ALTERED, or REDACTED:</b>  <b>“[S]he finally . . . kicked the bucket[ ]. . . [I]t gave us no little relief . . .”</b></p> <p>Note above: no space between the [ ] and the ellipsis, which is itself followed by a period to mark the grammatical end to the quoted material.</p> <p style="text-align: right;">See Bluebook Rule 5.3.</p>
<p>4. You wish to rewrite a passage substantially in order to mesh it more seamlessly into your style and document.</p> <p>Why rewrite?</p> <p>☞ Source has greater breadth and detail than is appropriate.</p> <p>☞ Style is unreadable or a bad fit (jargon, complex, antiquated).</p> <p>Caveat: If you find yourself changing a word here &amp; there simply because you want to avoid the appearance of a quotation, pause to reconsider: if the</p>	<p><b>Paraphrase:</b>  The rewriting conveys the ideas in the passage with words and syntax that is more compatible with your style and the demands of your document.</p> <p>The source of the paraphrase is <b>always</b> cited.</p>	<p><b>TIPS:</b> In general, paraphrase rather than quote source language <b>unless</b> you are</p> <ol style="list-style-type: none"> <li>(1) stating a rule or a “phrase that pays”</li> <li>(2) justifying a conclusion you have drawn from the source, or</li> <li>(3) discussing specific language otherwise at issue.</li> </ol> <p><b>Observations on the pros &amp; cons of paraphrasing:*</b></p> <p>Pros: 1) most successfully integrates outside information into writer’s own text  2) creates shorter, smoother documents</p> <p>Cons: 1) requires writer to take more care to provide effective signals  2) avoid when exact wording is in dispute  3) can fail if indicators of who said what are too weak for reader to follow  4) can confuse reader if more than one source is cited in a single sentence</p> <p><b>EXAMPLE OF INEFFECTIVE QUOTING:*</b></p> <p>In <i>Allridge v. Scott</i>, 41 F.3d 213, 222 (5th Cir. 1994), the court noted:</p> <p style="padding-left: 40px;"><b>We . . . read <i>Simmons [v. South Carolina]</i> to mean that due process requires the state to inform a sentencing jury [in a capital trial] about a defendant’s parole ineligibility when, and only when, (1) the state argues that a defendant represents a future danger to society and (2) the defendant is legally ineligible for parole.</b></p>

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<p>passage needs no substantial revision, then quote it, showing omissions or minor alterations.</p> <p>If, on the other hand, you have good reason to tailor it to the needs of the document, recast it in your own words to meet that goal, retaining, however, the meaning of the passage.</p>		<p>Unlike South Carolina, “Texas did not statutorily provide for parole ineligibility at the time of Allridge’s conviction,” so the requirement in <i>Simmons</i> that the jury be informed as to the defendant’s future dangerousness and ineligibility for parole did not apply in <i>Allridge</i>.</p> <p><b>EXAMPLE OF EFFECTIVE PARAPHRASING (plus effective quoting):*</b></p> <p>The Fifth Circuit read <i>Simmons</i> to require that a sentencing jury in a capital trial be informed of a defendant’s ineligibility for parole “when and only when” he arguably “represents a future danger to society and . . . he is legally ineligible for parole.” <i>Allridge v. Scott</i>, 41 F.3d 213, 222 (5th Cir. 1994). Because at the time of Allridge’s conviction, Texas statutes included no provision for parole ineligibility (or “life-without-parole”), <i>Simmons</i> did not apply.</p> <p>* See Terri LeClercq, <i>Legal Writing Style</i> 77-78 (4th ed. 2007).</p>

### Paraphrasing and style:

Be sensitive to the writer’s style and consider whether this matters to your own text. If your purpose is merely reportorial, paraphrase away. But do not let your own critical thinking fall slave to the “tyranny of paraphrase.” (See Elizabeth Fajans and Mary R. Falk, “Against the Tyranny of Paraphrase: Talking Back to Texts,” 78 Cornell L. Rev. 163 (1993))

#### ORIGINAL:

**The time for the healing of the wounds has come. The moment to bridge the chasms that divide us has come. The time to build is upon us. We have, at last, achieved our political emancipation. We pledge ourselves to liberate all our people from the continuing bondage of poverty, deprivation, suffering, gender, and other discrimination.**

Nelson Mandela, “Let Freedom Reign” 10 May 1994

Any manner of trimming this to a reportorial essence will do it an injustice. But, if quoting it in its entirety is inappropriate, describe it simply & briefly.

#### PARAPHRASE:

**In his 1994 speech “Let Freedom Ring,” Mandela urged his listeners to put the pain of apartheid behind them and to turn their attention to freeing all South Africans from the universal bondage of life’s misfortunes.**

### When to paraphrase?

“The choice to paraphrase or to quote is more art than science. What matters is the readability and effectiveness of the result, not enslavement to some seemingly arbitrary rule (‘What am I supposed to do here?’). In any particular instance, when in doubt, try it one way, then try it the other, and see which you think works better. Getting good at using outside material in your own writing is less a function of mastering rules than it is a matter of intelligent trial and error, of time on task over the course of your legal education, both as a student and even more as a lawyer.” LWI listserve discussion participant. †

OBJECTIVE	RESPONSE	HOW?
<p>5. You use (or are perhaps unaware that you use) another's thoughts or words as your own.</p>	<p><b>Plagiarism</b></p>	<p>Quote or paraphrase at will without citing your source.</p> <p>NB: Legal writing does not recognize the "rule" that information found in more than three sources is "general" and thus needs no citation. Au contraire—a passage whose source goes uncited bears no authoritative weight whatsoever.</p> <p><i>When need I not cite?</i>  When your own interpretation of the subject is being stated, rather than that of some court or other authority.  OR  When you are explaining how a general legal standard might apply to novel facts.</p> <p>That's it. Better safe than sorry. Remember that your reader doesn't give a fig for your personal authority. Rely upon and acknowledge sources the reader is more likely to respect.</p>
<p><b>Finally, the form you choose to incorporate sources into your narrative depends upon your objectives and upon the tenor of the final document.  Edit for uniformity in style and tone and flow.</b></p>		
<p>† This chart was originally prepared by Joan Anne Magat, Senior Lecturing Fellow, Duke Law, "who adapted it from a discussion of this topic on the LWIOnline listserv, summer 2003." She thanks "the legal writing professors who contributed ideas and examples to this discussion." It was further revised by Kenneth D. Chestek, Clinical Associate Professor of Law, Indiana University School of Law—Indianapolis. I have updated and revised the chart. – Prof. Thyfault</p>		