

COMMENTARY

## The 'Cleaned Up' Parenthetical Is Gaining Traction and Changing Legal Writing



Johanna Sheehe, with Sheehe & Associates in Miami. Courtesy photo

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August 11, 2021 at 09:35 AM

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Career Development

4 minute read

Persuasive writing is fundamental to the successful practice of law. But a brief must be readable before it can be persuasive, and an inherent tension exists between readability and the need to accurately cite sources. While the Bluebook, the most widely accepted guide for legal citation, provides explicit and well-reasoned rules for legal writers to properly cite the source of quoted material, passages with multiple layers of citation can quickly become jumbled with brackets, ellipses, and parenthetical information which often distracts from the author's argument and reasoning. How then, can an attorney balance readability and accuracy? Attorney Jack Metzler proposes the use of the parenthetical (cleaned up)—and this suggestion is quickly gaining traction.

What began as a simple tweet on Jack Metzler's @SCOTUSPlaces twitter handle soon developed into an essay and then a trend. Courts around the country have adopted the use of (cleaned up) as a way to avoid "citation baggage" that distracts from the written opinion. In Florida, (cleaned up) has appeared in opinions issued by federal and state courts including the Northern, Middle, and Southern District Courts and the First and Second District Courts of Appeal. The parenthetical has similarly appeared in opinions issued by the Eleventh Circuit Court of Appeal.

What exactly does (cleaned up) signal, and how is it used? Metzler suggests the use of (cleaned up) when quoting a court decision which, in turn, contains quoted material from another decision. In other words, the parenthetical is most appropriate when quoting text with multiple layers of source information and containing alterations. This is because when moving beyond the first level of quotation, the rules pertaining to alterations, internal quotations, and explanatory parentheticals become particularly complex and unwieldy. When used properly, the use of the parenthetical signals that the author: has removed non-substantive material such as brackets, ellipses, or internal citations; might have changed capitalization without signaling the change with brackets; and represents those alternations were solely made to enhance readability, and that the quote is otherwise unaltered. The parenthetical (*cleaned up*) can also be used to "cut out the middleman" when quoting a decision which quotes a second decision, which in turn quotes a third.

The following comparison is illustrative of how (cleaned up) can streamline a citation.

The First Circuit has held that "[p]ersecution normally involves 'severe mistreatment at the hands of [a petitioner's] own government,' but it may also arise where 'non-governmental actors are in league with the government or are not controllable by the government.'" *Ayalya v. Holder*, 683 F.3d 15, 17 (1st Cir. 2012) (second alteration and ellipsis in original) (quoting *Silva v. Ashcroft*, 394 F.3d 1, 7 (1st Cir. 2005)).

The First Circuit has held that "persecution normally involves severe mistreatment at the hands of a petitioner's own government, but it may also arise where non-governmental actors are in league with the government or are not controllable by the government." *Ayalya v. Holder*, 683 F.3d 15, 17 (1st Cir. 2012) (cleaned up).

In addition to increased readability, using (cleaned up) has another added benefit—decreased word count. In some instances, (cleaned up) can reduce the number of words used in the quotation by over twenty percent. These savings can conserve valuable real estate in a brief and help an attorney meet page or word limitations set by a court.

The legal community's initial hesitation to adopt the parenthetical's use is waning as (cleaned up) becomes a generally accepted way to address complex citations. Indeed, the widespread adoption of (cleaned up) should do much to assuage the fears of attorneys who are reluctant to incorporate (cleaned up) in their writing. Although it is natural to worry that use of this parenthetical could affect credibility, many find the enhanced readability and efficiency of this approach worth the risk.

Even U.S. Supreme Court Justice Clarence Thomas embraced this approach in the Feb. 25, decision in *Brown v. King*, prompting many to wonder if the parenthetical's use could usher in additional innovation to the legal writing world. It remains to be seen whether this modern take on citation will serve a catalyst for broader change, but if nothing else, the Supreme Court's endorsement of this commonsense approach signals weariness with the cumbersome and distracting citation rules that have been the legal standard for decades.

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