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Drafters and Editors Rejoice: The Increasing Prevalence of the (Cleaned Up) Parenthetical

In what began as a tweet and later developed into a law review article, Jack Metzler, a government appellate lawyer, proposed a new parenthetical to avoid the Bluebook’s complexity when quoting “language from an opinion that includes a quotation from another opinion.” Jack Metzler, *Cleaning Up Quotations*, 18 J. App. Prac. & Process 143, 155 (2017). To avoid brackets, ellipsis, internal citations, and footnote references in a citation, Metzler suggests writers keep the single set of double quotation marks, remove the parenthetical “(citation and punctuation omitted),” capitalize the first letter of the quotation if it begins a sentence and add a new parenthetical “(cleaned up)” at the end of the citation. With this revised format, writers will be citing the quotation as though “the words were original to the court that is being cited.” The (cleaned up) movement recently received major support when Supreme Court Justice Clarence Thomas used Metzler’s parenthetical in *Brownback v. King*, 141 S. Ct. 740, 748 (2021). This article examines the pros and cons of the (cleaned up) parenthetical and concludes that the benefits outweigh the potential drawbacks.

The Pros and Cons of the (Cleaned Up) Parenthetical

Since its inception, the (cleaned up) parenthetical has been used in more than 5,000 judicial opinions,^[1] demonstrating the streamlined approach’s popularity. So, what are the benefits of the citation method? First, the (cleaned up) parenthetical supports the hallmark of powerful, written advocacy – clear and concise writing – and removes extraneous material that can distract the reader. Second, with many courts imposing word limits on briefs, the parenthetical saves words for substantive arguments as it is shorter than its predecessors “(citation and punctuation omitted)” and “(internal quotation marks and citations omitted).” Third, the (cleaned up) parenthetical encourages lawyers to use the best cites, no matter how complicated the passages are, for an argument that would have otherwise been too tedious to cite according to the Bluebook. Put simply, the Bluebook creates unnecessary “citation baggage,” as Metzler states, and the (cleaned up) parenthetical is an easy solution to a complex citation problem.

What is a boon for the drafter, however, does have drawbacks for the reader. Since the parenthetical allows the author to cite the source without reference to internal quotations, readers will likely lose references to potentially important cases and earlier authorities. Also, the (cleaned up) parenthetical has the potential of being misused if writers (in)advertently alter the quotation being cited and conceal it by adding (cleaned up). Lastly, the (cleaned up) parenthetical allows authors to change capitalization without using brackets, so the reader might have difficulty finding the direct quotation since its original form has been altered without indication. While these concerns are legitimate, they are largely mitigated by electronic resources containing case law such as Westlaw, LexisNexis, and other websites. A quick search will reveal if a passage was misquoted and its provenance.

Takeaway

The drafting benefits of the (cleaned up) parenthetical exceed its potential drawbacks, particularly in the modern era of online case databases. We should take Justice Thomas's lead and encourage its universal adoption in all federal and state courts.

[1] Debra Cassens Weiss, Justice Thomas goes rogue on the Bluebook with 'cleaned up' citation—to the delight of appellate lawyers, ABA Journal (Mar. 15, 2021), <https://www.abajournal.com/news/article/justice-thomas-goes-rogue-on-the-bluebook-with-cleaned-up-citation-to-the-delight-of-appellate-lawyers>.