



ARTICLE

Should Legal Writing Professors Continue to Teach Traditional Legal Citation Rules for Parentheticals Despite the Increased Usage of (Cleaned Up) Parentheticals?

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I transitioned into teaching Legal Writing in 2023. Early in my first semester, I discussed the now well-known case of *Mata v. Avianca, Inc.* wherein counsel was sanctioned for filing a pleading created by ChatGPT and which contained citations to non-existent cases.¹ The case provided a good example of the importance of accurate legal citations.

Later that semester, Professor Margie Alsbrook² presented her paper discussing the increased use of (cleaned up) citations. For those who may be unfamiliar with (cleaned up) citations, in an article titled *Cleaning Up Quotations*, 18 J. App. Prac. & Process 143, 153-54, 155 (Fall 2017), Jack Metzler expanded on his own Tweet dated March 15, 2017, and proposed a new Bluebook rule 5.4 to “avoid the

¹ No. 22-cv-1461 (PKC), 2023 WL 4114965, at *15–*17 (S.D.N.Y. June 22, 2023) (imposing sanctions on attorneys who relied on ChatGPT for research and whose ChatGPT queries resulted in fabricated legal citations, which the attorneys submitted to the court without confirming the accuracy of the citations).

² Margie Alsbrook, Assistant Professor, Mercer University, Walter F. George School of Law, presented a paper titled *Untangling Unreliable Citations*, which will soon be published at 37 Geo. J. of L. Ethics ____ (forthcoming 2024).

clutter that quotations gather as they are successively requoted and altered from court opinion to court opinion, as well as the citation baggage that accumulates along the way.” To encourage more lawyers to begin using (cleaned up) citations, Metzler noted that “Bryan Garner, the country’s leading expert on legal writing, tweeted out his support in August 2017.”³

Having never encountered (cleaned up) citations during my time in practice, I turned to Westlaw and was astounded to see Professor Alsbrook was indeed correct: practitioners and courts across the country have been using (cleaned up) citations more and more every year since they were introduced in 2017.⁴ However, one opinion stood out because the court took issue with a practitioner’s use of (cleaned up) citations. In *Callahan v. United Network for Organ Sharing*,⁵ the Eleventh Circuit observed that the (cleaned up) parenthetical obscured important information:

A “cleaned up” parenthetical has limited utility at most. And whatever utility that innovation may have will vanish entirely if it is used to obscure relevant information. Here, UNOS quoted *Advance Local Media* as saying that “[u]nlike ‘materials that invoke judicial resolution of the merits,’ the public interest is not furthered by documents that are ‘irrelevant to the underlying issues,’ like ‘the overwhelming majority of documents disclosed during discovery.’ ” But the text UNOS “**cleaned up**” comes from an explanatory “cf.” parenthetical summarizing *AbbVie Products* and therefore does not constitute a holding in *Advance Local Media* itself. See *Advance Loc. Media*, 918 F.3d at 1168. Even more troubling, UNOS omitted the end of the sentence it quoted, which reiterated that “public access is presumed for materials that invoke judicial resolution of the merits.” *Id.* (quotations omitted).⁶

Professor Alsbrook’s paper,⁷ wherein she expresses her concerns with regard to the reliability of (cleaned up) citations, and the *Callahan* opinion raised two questions in this writer’s mind. Now that (cleaned up) citations are being used by

³ Jack Metzler, *Cleaning Up Quotations*, 18 J. App. Prac. & Process 143 at 162.

⁴ Professor Alsbrook’s article contains a chart showing the growth in the use of cleaned up citations between 2016 and 2019. Alsbrook, *supra*, n. 3. My Westlaw search of opinions using (cleaned up) citations between 2020 and 2024 shows that the upward trend continues: year 2020—3,677 opinions; year 2021—8,068 opinions; year 2022 and 2023—Westlaw stopped at 10,000; 2024 (as of May 8, 2024)—6,463 opinions.

⁵ 17 F.4th 1356, 1365 n.1 (11th Cir. 2021).

⁶ *Callahan*, 17 F.4th at 1365 n.1.

⁷ Alsbrook, *supra*, n. 3.

increasing numbers of practitioners and courts, should Legal Writing Professors continue to teach traditional legal citation rules for parentheticals? And if so, why?

I. Should Legal Writing Professors Continue to Teach Traditional Legal Citation Rules for Parentheticals?

Legal Writing professors should continue to teach traditional legal citation rules for parentheticals for several reasons.

First, because one of the jobs of a Legal Writing Professor is to prepare students for the real world of legal writing, Legal Writing Professors have an obligation to continue to teach traditional legal citation rules for parentheticals to help prevent their students from inadvertently violating the rules of professional conduct through misleading or inaccurate parentheticals in their writing. At least one court has publicly criticized an attorney in its opinion after Plaintiffs' counsel included inaccurate legal citations in a legal memorandum, observing that the inaccurate legal citations "implicates counsel's reputation and duty of candor to the Court."⁸ Moreover, as noted by the Eleventh Circuit,⁹ Professor Alsbrook and others,¹⁰ use of (cleaned up) citations may have the effect of obfuscating the law. The *Callahan* opinion did not discuss whether the practitioner's use of the (cleaned up) parenthetical *intentionally* obfuscated the law. However, even where a practitioner's use of a (cleaned up) parenthetical *inadvertently* misrepresents the law, the end result is the same: the law has been obfuscated. Because the end goal of any Legal Writing course is to teach the art of writing strong and clearly supported legal arguments, by continuing to teach traditional legal citation rules for parentheticals, Legal Writing Professors increase their chances of achieving that goal.

Second, Legal Writing Professors should continue to teach traditional legal citation rules for parentheticals because their students are future practitioners. While many practitioners and courts have latched on to (cleaned up) citations, many other courts continue to require practitioners appearing before them to follow the Bluebook. Indeed, many courts have publicly criticized practitioners in their published opinions for failing to use proper Bluebook citations in their legal memoranda.¹¹ In light of the number of times that courts have publicly chastised

⁸ *Sanft v. Sims Group USA Corp.*, No. 19-cv-08154-JST, 2023 WL 6851992, at *10 (N.D. Cal. Oct. 16, 2023) (quoting *Kalter v. Keyfactor, Inc.*, No. 21-CV-1707-L-DDL, 2022 WL 16752977, at *3 (S.D. Cal. Nov. 7, 2022)).

⁹ 17 F.4th at 1365 n.1.

¹⁰ Alsbrook, *supra*, n. 3; see also *infra*, note 19.

¹¹ See, e.g., *Johnson v. Snyder*, No. 15-3299, 2017 WL 429630, at *3 n.3 (Ct. App. Vet. Claims Feb. 1, 2017); *U.S. Bank N.A. v. Jewell Invest. Inc.*, 69 N.E.3d 524, 531 n.1 (Ind. Ct. App. 2017); *Najmyar v. Carnival Corp.*, No. 1:17-cv-22448-UU, 2017 WL 7796327, at *1 (S.D. Fla. August 28, 2017); *Bank of America, N.A. v. Ryckley*. No. 1:16-CV-04540-ELR, 2017 WL

counsel for failing to follow the Bluebook, any Legal Writing Professor who fails to teach the traditional legal citation rules for parentheticals would be doing a disservice to their students.

Third, continuing to teach traditional legal citation rules for parentheticals presents Legal Writing Professors with a valuable opportunity to highlight the ethical aspects of legal writing and to teach their students how to avoid ethical pitfalls when drafting parentheticals. Legal Writing Professors know that drafting parentheticals persuasively, succinctly, and *accurately* is a critical skill that 1L students must develop to be successful legal writers. Due to the level of detail required for parentheticals drafted using traditional rules of legal citation, continuing to teach the traditional legal citation rules for parentheticals will necessarily force Professors and students to wrestle with the complexities of drafting accurate parentheticals. During that process, Professors should drive home the importance of the inclusion of the internal “clutter”¹² that is required for precise parentheticals, and how the meaning of a parenthetical might quickly change if that “internal clutter” were omitted, intentionally or not.

For example, a Legal Writing Professor could create a set of two parentheticals for the same case, using a case that the class is already familiar with from a previous writing assignment. Professors should draft one parenthetical using legal citation rules, and the other parenthetical using the (cleaned up) method, being careful to intentionally omit some of the internal clutter, such that the (cleaned up)

10574070, at *2 (N.D. Ga. Oct. 31, 2017); *Hunt v. Caliber Home Loans, Inc.*, No. 0:17-cv-61658-UU, 2017 WL 11537902, at *1 (S.D. Fla. Dec. 4, 2017); *Centrella v. Ritz-Craft Corp. of Pa., Inc.*, No. 2:14-cv-111-jmc, 2018 WL 840038, at *11 n.2 (D. Vt. Feb. 12, 2018); *Garcia v. Berryhill*, No. 16-cv-1020 SMV, 2018 WL 1226020, at *5 n.5 (D.N.M. March 8, 2018); *Garren v. CVS Health Corp.*, No. 3:17-cv-149, 2018 WL 3377327, at *6 n.2 (E.D. Tenn. July 11, 2018); *Wilbers v. GEICO Cas. Co.*, 338 F.Supp.3d 644, 650 n.1 (E.D. Ky. 2018); *Ramirez v. ITW Food Equip. Group LLC*, No. CV 12-10023-AB (AGRx), 2018 WL 5816093, at *9 (C.D. Cal. July 3, 2018); *Jordan v. BP Peterman Law Group, LLC*, No. 18-CV-1621-JPS, 2019 WL 698459, at 4 n.1 (E.D. Wis. Feb. 20, 2019); *Sosa v. Carnival Corp.*, No. 18-20957-CIV-AL-TONAGA/GOODMAN, 2019 WL 330865, at *7 n.1 (S.D. Fla. Jan. 25, 2019); *Perry v. Insys Therapeutics, Inc.*, No. 18-cv-1190-JD, 2019 WL 2106391, at *7 n.1 (D. N.H. May 14, 2019); *Hughes v. Nationwide Bank*, 387 F. Supp. 3d 612, n.6 (W.D. Pa. 2019); *Garcia v. City of Mcallen* No. 7:19-cv-00068, 2020 WL 4934582, at *7 n.15 (S.D. Tex. Aug. 24, 2020); *United States v. Fitzgerald*, 514 F. Supp.3d 721, 773 n. 9 (D. Md. 2021); *Safe Harbor Pollution Ins. v. River Marine Enterps., LLC*, 593 F. Supp.3d 82, 95 n.1 (S.D.N.Y. 2022); *Sorg v. Wegehof*, 205 N.E.3d 224, 2023 WL 407717, at *6 n.1 (Ind. Ct. App. 2023) (unpub.); *Stein v. City of Las Vegas*, No. 2:23-CV-355 JCM (BNW), 2024 WL 2874185, at *2 n.1 (D. Nev. June 7, 2024) (admonishing counsel for Westlaw citations that did not comply with Bluebook format); *Rooji v. Jaddou*, No.: 2:23-cv-06321-AB-SSC, 2024 WL 653378, at *6 n.2 (C.D. Cal. Jan 12, 2024) (Instructing counsel how to properly cite federal statutes using Bluebook format).

¹² Metzler, *Cleaning Up Quotations*, 18 J. App. Prac. & Process 143 at 162.

citation arguably misrepresents the case. The Professor could either present the two parentheticals to the class via PowerPoint, or written on a white board, and call on students to discuss the differences between the meaning of the two parentheticals. During the class discussion, the Professor should ask students to discuss the differences between the way in which the parentheticals were drafted, and any ethical implications created by the inclusion or omission of “internal clutter”¹³ in the parentheticals. The goal of this exercise would be to illustrate how the use of (cleaned up) parentheticals might result in obfuscation of the law or a violation of a lawyer’s duty of candor to the court.¹⁴

2. A Call for the Return to the Use of Traditional Legal Citation Rules for Parentheticals

Reversing the trend towards using (cleaned up) citations may be difficult, if not impossible, because as noted by Professor Alsbrook,¹⁵ the dramatic upward trend in the use of (cleaned up) citations is unmistakable. I also recognize that many legal scholars, practitioners, and Judges have openly criticized the Bluebook and its many rules.¹⁶ Nevertheless, and while this is not a new idea, this Professor joins with Professor Alsbrook and others¹⁷ who have urged practitioners and the courts to again consider returning to the use of traditional legal citation rules for parentheticals for three reasons.

First, parentheticals that comply with traditional legal citation rules permit courts and practitioners to evaluate the arguments presented in legal memoranda more efficiently. The most effective practitioners spend a great deal of time researching and analyzing the cases cited in legal memoranda and appellate briefs, going as far down the proverbial rabbit hole as necessary to properly respond with appropriate counterarguments. If a practitioner is presented with a document

¹³ Metzler, *Cleaning Up Quotations*, 18 J. App. Prac. & Process 143 at 162.

¹⁴ *Sanft*, 2023 WL 6851992 at *10 (quoting *Kalter*, 2022 WL 16752977 at *3); *Callahan*, 17 F.4th at 1365 n.1.

¹⁵ Alsbrook, *Untangling Unreliable Precedent*, 37 Geo. J. of L. Ethics ____ (forthcoming 2024).

¹⁶ Paul A. Gowder, *An Old-Fashioned Bluebook Burning*, NORTHWESTERN LAW JOURNAL DES REFUSÉS: Vol. 1: Iss. 1, Article 2 (2024); Michael S. Kwun, *The New Parentheticals*, 22 Green Bag 2d 13 (2018); Hon. Richard A. Posner, *What Is Obviously Wrong With The Federal Judiciary, Yet Eminently Curable Part I*, 19 Green Bag 2D 187, 193-94 (2016).

¹⁷ Adam Eakman, *Why Attorneys Should Stop Using “(cleaned up),” Attorney Words* (Apr. 10, 2018), <https://perma.cc/RGX7-27JY>; Tessa Dysart, *(Clean[] Up) Your House, Your Car, Your Life—Not Your Citations*, Appellate Advocacy Blog (Oct. 18, 2021), https://lawprofessors.typepad.com/appellate_advocacy/2021/10/clean-up-your-house-your-car-your-life-not-your-citations.html; Katrina Robinson and Suzanne Rowe, *Should Oregon Attorneys Clean up Quotations?*, 82-NOV Or. St. B. Bull. 13 (November 2021).

containing (cleaned up) citations, that practitioner will likely have to spend *more* time in the rabbit hole because he or she will have to first determine what specific language was being “cleaned up” from the original citation, and then determine the impact of the “cleaning up.” Then, in the instances where the (cleaned up) citations omitted relevant and/or critical information, the practitioner will have to draft a lengthy discussion addressing how the omitted information impacts the legal argument, why the “cleaned up” information should not have been omitted, and, finally, a counterargument addressing the omitted information.

Second, court opinions containing parentheticals drafted using traditional rules for legal citations permit practitioners to raise legal challenges to court orders and opinions more efficiently. For example, under Florida’s and the Federal Rules of Appellate Procedure, when an appellate court issues an opinion which does not appear to be supported by the legal authorities cited therein, counsel may file a Motion for Rehearing, Motion for Clarification, or Petition for Panel Rehearing.¹⁸ If counsel chooses to file a Motion for Rehearing or Motion for Clarification, counsel is required to “state *with particularity* the points of law or fact that, in the opinion of the movant, the court has overlooked or misapprehended in its order or decision,” or to “state *with particularity* the points of law or fact in the court’s order or decision that, in the opinion of the movant, are in need of clarification.”¹⁹ If counsel chooses to file a Petition for Panel Rehearing, counsel is again required to “state *with particularity* each point of law or fact that the petitioner believes the court has overlooked or misapprehended . . .”²⁰

Experienced appellate practitioners know that prevailing on a motion for rehearing has always been difficult because the burden is so high. After all, the purpose of the motion is to “direct the Court’s attention to some material matter of law or fact which it has overlooked in deciding a case, and which, had it been given consideration, would probably have brought about a different result.”²¹ Now, considering the increased use of (cleaned up) citations in court opinions, it may be that the likelihood of prevailing on a motion for rehearing is even more difficult. Similar to the process described above, when counsel is presented with an opinion that contains (cleaned up) citations, counsel will have to first determine what specific language was “cleaned up” from the original citation, determine the impact of the “cleaning up,” and then state, with particularity, the points of law that the

¹⁸ Fla. R. App. P. 9.330; Fed. R. App. P. 40.

¹⁹ Fla. R. App. P. 9.330(a)(2)(A), (a)(2)(B) (*bold emphasis added*).

²⁰ Fed. R. App. P. 40(a)(2) (*bold emphasis added*).

²¹ *United States v. Burhoe*, 875 F.3d 55, 57 (1st Cir. 2017) (quoting *NLRB v. Brown & Root, Inc.*, 206 F.2d 73, 74 (8th Cir. 1953); see also *McDonnell v. Sanford Airport Authority*, 200 So. 3d 83, 84 (Fla. 5th DCA 2015) (“The purpose of a motion for rehearing is to direct the court to points of law or fact that, in the opinion of the movant, the court overlooked or misapprehended in its opinion.”).

court overlooked or misapprehended. Where an opinion employs a (cleaned up) citation which omits relevant and/or critical information, counsel will have to argue why the “cleaned up” information should not have been omitted from the court’s (cleaned up) citation(s), and then argue how the omitted information, if included, would change the court’s final conclusion.

Third, courts should return to the use of traditional legal citation rules because doing so will, as argued by several scholars before me, not only mitigate any impacts on the evolution of jurisprudence which may have already been caused by using (cleaned up) citations,²² but even more importantly, it will also signal that practitioners should do so as well. While this Professor has no doubt that Mr. Metzler had only good intentions when he introduced (cleaned up) citations, and that writers who use (cleaned up) citations do so with only good intentions, the fact remains that using (cleaned up) citations has a very real potential for abuse because (cleaned up) citations arguably give a writer greater leeway to *intentionally* present the law in a way that may not comply with a lawyer’s duty of candor to the court.²³ While legal citations drafted using traditional formats may not be as aesthetically pleasing as (cleaned up) citations, the “internal clutter” that is part of traditional legal citations matters because oftentimes, inclusion of the internal clutter signals to the reader how strongly supported the legal argument is, or is not.

3. Concluding Thoughts

Despite the increased use of (cleaned up) parentheticals, Legal Writing Professors should continue to teach traditional legal citation rules for parentheticals. Students’ solid understanding of parentheticals that comply with traditional formats will not only help them develop the skill to draft their own accurate parentheticals, but it will also help students to avoid ethical pitfalls and possible public admonishments as they enter the real-world practice of law. Practitioners and courts should also seriously consider returning to the use of traditional legal citation rules for parentheticals to not only mitigate any impacts on the evolution of jurisprudence which may have already been caused by using (cleaned up) citations, but to

²² Alsbrook, *Untangling Unreliable Precedent*, 37 Geo. J. of L. Ethics ____ (forthcoming 2024) (citing *Sprint Communications Co. v. Theglobe.com Inc.*, 236 F.R.D. 524 (D. Kan. 2006); Adam T. Johnson, *End Times*, *Legal Citation Edition*, 76-AUG Bench & B. Minn. 26 (August 2019) (discussing potential effects of cleaned up citations on evolution of jurisprudence)

²³ Eugene Volokh, “New Twist on Legal Citations: The ‘(Cleaned Up)’ Parenthetical,” *The Volokh Conspiracy*, Reason, 7/24/2018 (<https://reason.com/2018/07/24/new-twist-on-legal-citations-the-cleanedf>) (last visited 8/2/2024); Adam Eakman, *Why Attorneys Should Stop Using “(cleaned up),”* Attorney Words (Apr. 10, 2018), <https://perma.cc/RGX7-27JY>; Katrina Robinson, *Teaching Law Students Not to Make a Mess of (cleaned up)*, Second Draft, Vol. 34, Issue 3 (2021).

bring the focus back to legal writing that is not only persuasive, precise, and that also complies with a lawyer's ethical duty of candor to the court.