

# CLEANING UP QUOTATIONS\*

Jack Metzler\*\*

## I. INTRODUCTION: QUOTES THAT QUOTE

Judges and lawyers use a lot of quotations in their writing. It's not hard to understand why: our common-law tradition places great value on what courts have said in the past.<sup>1</sup> And how better to show what a court said than to quote it?<sup>2</sup> Of course, when we talk about “what a court said” we necessarily mean what a judge wrote. So it often turns out that the best quotation for a proposition is one in which a judge has quoted some other judge. Not only that, there's a pretty good chance that second judge was quoting still another judge. You see where this is going.

All this quoting has a purpose. It assures readers that they don't have to rely solely on the author's say-so because the proposition has already been adopted by a court, and in so many

---

\*This essay began as a tweet. See Jack Metzler, @SCOTUSPlaces, *I propose a new parenthetical for quotes that delete all messy quotation marks, brackets, ellipses, etc.: (cleaned up)* (Mar. 15, 2017, 8:57 PM), <https://twitter.com/SCOTUSPlaces/status/842223292752760832>. That tweet was inspired by a judicial opinion in which the court quoted an earlier decision which quoted an earlier-still decision, resulting in a distracting mess of brackets, ellipses, and parenthetical indications that obscured the point that the court intended to make by quoting the earlier authority. Twitter—or at least the community known as #AppellateTwitter—enthusiastically endorsed the idea, see *id.* (showing responses, likes, and retweets), which led first to a quick justification for the idea and eventually to this more formal proposal.

\*\*@SCOTUSPlaces. Thanks to Blake Stafford for comments on an earlier draft and to #Appellate Twitter for its continuing support of this project.

1. “[T]he doctrine of Case-law, in the application of precedents to the trial of questions of law, is of paramount importance in English and American legal procedure.” Shackelford Miller, *The Value of Precedent*, 45 AM. L. REV. 857, 859 (1911).

2. Justice Miller advised the advocate preparing a brief to “give one or two extracts in the precise terms of the opinion of the court as to the point under discussion.” Samuel F. Miller, *The Use and Value of Authorities*, 23 AM. L. REV. 165, 176 (1889).

words.<sup>3</sup> An important part of that assurance comes from the citation that follows the quote, which communicates information from which the reader can assess the weight of the authority quoted.<sup>4</sup> The reader learns which court (sometimes also which judge) said it, when the court said it, how to find the opinion in which the court said it, and the very page on which the quote appears.<sup>5</sup> Adept legal readers incorporate this metadata into their understanding as they read along, comparing it to their knowledge about various courts and the relationships between them to give more or less weight to the quoted proposition.<sup>6</sup> This process, which benefits the writer by advancing the legal argument and building credibility with the reader, also benefits the reader, who usually learns enough from the quotation and the citation to avoid looking the case up.<sup>7</sup>

These benefits are in tension, however, with the need for readability.<sup>8</sup> Each quote (and its citation) has the potential to distract the reader from the author's line of reasoning. The potential is greater than when a writer cites authority without a quotation because what a court said in the past usually is not

---

3. "The main value of former decisions as precedents consists in the fact that they are the judgments of a court of competent jurisdiction and respectability." Miller, *supra* note 1, at 861 (quoting Miller, *supra* note 2, at 167).

4. See Alexa Z. Chew, *Citation Literacy* 5, 7 (UNC School of Law, Working Paper (Draft), July 25, 2017), available at [http://scholarship.law.unc.edu/working\\_papers/1/](http://scholarship.law.unc.edu/working_papers/1/); David J. S. Ziff, *The Worst System of Citation Except for All the Others*, 66 J. LEGAL EDUC. 668, 683 (2017).

5. See Ziff, *supra* note 4, at 684. Other information in the citation also affects the weight of the authority, such as whether the quotation is from a concurring or dissenting opinion, whether the decision was published, or the subsequent history of the case. See Chew, *supra* note 4, at 5.

6. Chew, *supra* note 4, at 10; see also ANTONIN SCALIA & BRYAN A. GARNER, *MAKING YOUR CASE: THE ART OF PERSUADING JUDGES* 133–34 (2012).

7. Judge Posner has captured the dilemma that judges face in evaluating advocates' use of authorities: "at the same time that they rely heavily on lawyers, judges do not trust lawyers completely, or even very much." RICHARD A. POSNER, *THE FEDERAL COURTS: CHALLENGE AND REFORM* 241 (1996).

8. Chew, *supra* note 4, at 7 (acknowledging that citation "addresses the need in a common law system to show the provenances of statements of law and balances that need with the competing one of brevity"). Bryan Garner recommends that all citations be relegated to footnotes to avoid distracting the reader. See SCALIA & GARNER, *supra* note 6, at 132–33. Justice Scalia disagreed, arguing that "the careful lawyer wants to know, while reading along, what the authority is for what you say." *Id.* at 134. For a compelling argument favoring inline citations, see Chew, *supra* note 4, at 8–15.

*exactly* what a legal writer wants to say later.<sup>9</sup> When that happens, writers alter the quote—maybe they change the verb tense; maybe they drop a word or two—but then they must indicate those changes within the quotation itself or in a parenthetical to the citation. Yet each change increases the amount of metadata that the reader must navigate before moving on to the next sentence. The potential to distract multiplies when the altered quotation is quoted by a subsequent writer. A passage can quickly become cluttered with brackets, ellipses, and quotation marks that distract the reader’s eyes and attention, while at the same time its citation becomes an unwieldy mess packed with case cites and parenthetical information that tests the reader’s ability to remember the point that the author was trying to make by using the quotation in the first place.

How to indicate changes to quotations and cite the sources of embedded quotations is not the problem. Most legal writers use the *Bluebook*, which has detailed rules (explored below) for quotations.<sup>10</sup> That a quote has been altered, and how, is important information for the reader. The *Bluebook* rules work fairly well to tell the reader how an author has changed a quotation, and they do so without too much distraction—for the first author anyway.<sup>11</sup>

But when the first author to use a quote is a judge and the *next* author wants to quote what that judge said, the rules require that the second author tell the reader—

- the immediate source of the quote;
- which part or parts of the quote came from an earlier authority;

---

9. Unfortunately, most judges seem to be focused on deciding the cases before them rather than on crafting pithy statements of law, free from references to the parties, their arguments, or specific facts in the case, which would then be convenient for future advocates and judges to quote without alterations. On the other hand, that is kind of their job.

10. See, e.g., Ziff, *supra* note 4, at 669 (“*The Bluebook* remains the standard for legal citation.”); see also THE BLUEBOOK, A UNIFORM SYSTEM OF CITATION 83–85, 85–86, 107–08 (Columbia Law Review Association et al. eds., 20th ed. 2015) (including Rules 5.2 (“Alterations and Quotations Within Quotations”), 5.3 (“Omissions”), and 10.6 (“Parenthetical Information Regarding Cases”)).

11. The first author to use a quote is actually the second author overall, counting from the original author of the quoted passage.

- any alterations that the immediate source made to the embedded quote; and
- any alterations that the current author makes to either the immediate quote or the embedded quote.

And all of this gets even more complicated if the second author is also a judge whose work a third author wants to quote.<sup>12</sup> The *Bluebook* has rules for “quotations within quotations” too<sup>13</sup> but it does not address how to deal with the successive layers of source indication that result from the rules when a quotation is slightly altered and quoted by court after court.

That extra baggage is the problem. It takes very few successive quotations before most legal writers will give up on trying to follow *Bluebook* form and find different ways to get their points across. A common strategy is to write around the problematic parts of a quotation, either by quoting fewer words or by making alterations to avoid the use of distracting prior-quotation baggage. An example is Chief Justice Roberts’s recent quotation of a bracket-ridden passage from an opinion written by Chief Justice Burger. He used a part of the quotation that contained only one of the five bracketed changes appearing in the original, and then overrode that change with one of his own. Here is the original sentence as it appears in *McDaniel v. Paty*:<sup>14</sup>

[To] condition the availability of benefits [including access to the ballot] upon this appellant’s willingness to violate a cardinal principle of [his] religious faith [by surrendering his religiously impelled ministry] effectively penalizes the free exercise of [his] constitutional liberties.” *Sherbert v. Verner*, 374 U.S. 398, 406 (1963).<sup>15</sup>

And here is Chief Justice Roberts’s quotation in *Trinity Lutheran Church v. Comer*:<sup>16</sup>

In this way, said Chief Justice Burger, the Tennessee law “effectively penalizes the free exercise of [McDaniel’s]

12. Actually the third and fourth authors, respectively. *See supra* n. 11.

13. Rule 5.2(e) covers quotations within quotations and Rules 10.6.2 and 10.6.3 cover how to indicate that the court was “quoting” or “citing” another authority. BLUEBOOK, *supra* note 10, at 84, 108.

14. 435 U.S. 618 (1978).

15. *Id.* at 626.

16. 582 U.S. \_\_\_, 137 S. Ct. 2012 (2017).

constitutional liberties.” *Id.*, at 626 (quoting *Sherbert v. Verner*, 374 U.S. 398, 406 (1963); internal quotation marks omitted).<sup>17</sup>

Chief Justice Roberts is an adept legal writer, and his substitution of one bracketed change for another is elegant. But should the Chief Justice (or any judge) really spend extra time working out how to construct a sentence simply because another judge used brackets too generously? Should clients pay for their lawyers to write around or fiddle with brackets, ellipses, quotation marks, and parentheticals to solve similar problems? And does all that clutter even contain any meaningful information?

Often it does not. When quoting another opinion, a judge should follow ordinary conventions to indicate alterations so that readers can distinguish the earlier authority from the opinion that quotes it and evaluate the quoting court’s use of the authority. But with that accomplished, the text of the quotation becomes part of the new opinion. If an advocate or judge wants to invoke the new decision as authority, whether all or some of the text came from an earlier opinion often doesn’t matter, and whatever the new court changed from the earlier opinion matters even less. Given the ubiquity of quotations, altered quotations, and further altered quotations in legal writing, problems like the one Chief Justice Roberts encountered in *Trinity Lutheran* occur all the time, and they needlessly consume judges’ time and effort, lawyers’ time and effort, and clients’ money.

The proposal outlined in this essay gives legal writers the option to drop superfluous material like brackets, ellipses, quotation marks, internal citations, and footnote references from their quotations by using a single new parenthetical—(*cleaned up*)<sup>18</sup>—to signal that such material has been removed and that none of it matters for either understanding the quotation or evaluating its weight.

Part II describes the *Bluebook* rules applicable to quotations, alterations of quotations, and quotations within quotations. Part III explains how the indications required by the

---

17. *Id.* at 2020 (quoting *McDaniel v. Paty*, 435 U.S. 618, 626 (1978)).

18. In this essay, I have placed (*cleaned up*) in italics when I’m talking about the parenthetical itself rather than showing how to use it in a citation. In practice (as in my examples), it should not be italicized.

*Bluebook* often fail to convey meaningful information beyond the first level of quotation. Part IV introduces (*cleaned up*) and how to use it. Part V should convince you to start using (*cleaned up*). Part VI briefly concludes.

## II. THE *BLUEBOOK* RULES

The *Bluebook* signals the importance of quotations in legal writing by devoting Rule 5—a full-blown, top-level, no-decimal-point rule—to the subject.<sup>19</sup> Rule 5.1 describes how to format quotations; with its most important dictate (for purposes of this essay) being the simple rule that quotations must be enclosed within quotation marks and that quotation marks within the quoted material appear as single quotation marks.<sup>20</sup> The meat of Rule 5, citation-wise, is found in Rules 5.2 and 5.3, which describe how to indicate that a quotation has been altered. When a quotation contains a quotation, these rules work together with Rule 10.6, which explains how to format a citation that appears within a parenthetical to identify the original source of a quote, and where to place that parenthetical.<sup>21</sup>

Rule 5.2 explains how to show that you have added, changed, or omitted letters; added words; or a fixed mistake in a quotation.<sup>22</sup> This kind of change opens up several ways to use a quotation while retaining the substance of the quoted passage. An author might substitute a lower case letter for a capital letter, for example, because the quote does not appear at the beginning of the author's sentence. Similarly, omitting or substituting a letter or two permits a writer to adjust a verb's conjugation or tense so that the quote fits grammatically within a new sentence. When a court's holding includes a litigant's name, a subsequent author might replace the name with a generic term like *defendant* or *party* to emphasize the principle of law stated in the quote rather than its specific application to the earlier case.

---

19. *BLUEBOOK*, *supra* note 10, at 82–86 (Rule 5: “Quotations”).

20. *See id.* at 83 (Rule 5.1(b)(i), which applies (as does this essay) to quotations that are not block-quoted).

21. *Id.* at 108 (setting out Rule 10.6.2 (“Quoting/Citing Parentheticals in Case Citations”) and Rule 10.6.3 (“Order of Parentheticals”)).

22. *Id.* at 83 (setting out Rule 5.2(a) (“Substitution of letters or words”), Rule 5.2(b) (“Omission of letters”), and Rule 5.2(c) (“Mistakes in original”)).

The *Bluebook* generally directs authors to indicate these changes by putting the new material in brackets.<sup>23</sup>

Rule 5.3 covers how to indicate that you have omitted material (other than individual letters) from a quotation. Omitting material helps authors draw specific points from court opinions when they are made over multiple sentences, appear in a complex sentence, or are otherwise interrupted by material other than the point the author wishes to make. The *Bluebook* rule is simple: when one or more words are omitted, use an ellipsis.<sup>24</sup> The rule explains when an ellipsis is required (and when prohibited), where to place it, and how to punctuate and capitalize the quote depending on how the quotation is used and where the omission appears within the quote.<sup>25</sup>

Both Rule 5.2 and Rule 5.3 also instruct how to indicate changes that aren't apparent from brackets or ellipses: use a parenthetical.<sup>26</sup> We're told to use a parenthetical when we've taken out a footnote—(footnote omitted), a citation—(citation omitted), or quotation marks—(internal quotation marks omitted);<sup>27</sup> when we've added or removed emphasis—(emphasis

---

23. See *id.* (Rule 5.2(a)). In the case of mistakes, Rule 5.2(c) says to use “[sic]” and otherwise leave the mistake “as [it] appear[s] in the original.” *Id.* Many writers ignore this rule because [sic] is often used as passive-aggressive criticism of the original author. As a result, the reader could view dropping a “[sic] bomb” as reflecting poorly on the writer even if no criticism of the earlier author was intended. Other style guides recognize this. For example, the Supreme Court’s style guide permits authors to correct an error with brackets “where it is desired to place less emphasis on the error.” OFFICE OF THE REPORTER OF DECISIONS, THE SUPREME COURT’S STYLE GUIDE § 7.4 (Jack Metzler ed., 2016). If the error is a misspelling or an obvious typo and has “no relation to the purpose of the quotation,” the *Guide* permits a correction without any indication at all. *Id.*

24. BLUEBOOK, *supra* note 10, at 85 (Rule 5.3).

25. *Id.* at 85–86 (Rule 5.3(a)–(b)). The *Bluebook* does not provide guidance about when omitting words is permissible, like “Never use an ellipsis to omit ‘not’ and change the meaning of a quote to its opposite.” Presumably attorneys are to exercise professional judgment in light of their obligation of candor to the tribunal when making such decisions. See, e.g., American Bar Association, *Model Rules of Professional Conduct*, at Rule 3.3, available at [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_3\\_3\\_candor\\_toward\\_the\\_tribunal.html](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_3_3_candor_toward_the_tribunal.html).

26. BLUEBOOK, *supra* note 10, at 83–84 (setting out Rule 5.2(d) (“Changes to citations”) and Rule 5.3(c) (“When omitting a footnote or citation”).)

27. Many legal writers leave out “internal” as superfluous. If you’d never tell the reader that you omitted quotation marks external to the quoted material, the qualification that the quotation marks you omitted were internal doesn’t add anything useful. A few recent examples of unspecified “quotation marks omitted” can be found in *United States v. Brown*, 865 F.3d 566, 570 (7th Cir. 2017) (Bauer, J.); *Ovalles v. United States*, 861 F.3d

added) or (emphasis removed); and sometimes when we *haven't* changed the quotation—(alteration in original).<sup>28</sup> Recognizing that more than one of these may apply, the *Bluebook* dictates the order in which they should appear: (1) (emphasis added); (2) (alteration in original); (3) (citation(s) omitted); (4) (emphasis removed); (5) (internal quotation marks omitted); and (6) (footnote(s) omitted).<sup>29</sup> Each of these, apparently, should appear within its own sequential parenthetical, which is each to be in addition to any parentheticals required to explain the weight of the authority or other explanatory phrases.<sup>30</sup>

When the quoted material itself includes a quotation, the *Bluebook* allows the omission of internal quotation marks that would otherwise appear at the very beginning and very end of the quote.<sup>31</sup> It advises to cite the original source, “[w]henever possible.”<sup>32</sup> That citation should appear in yet another parenthetical after the Rule 5.2 and 5.3 parentheticals, formatted as if the source were cited directly, and including whatever parentheticals of its own those rules require.<sup>33</sup> When a case cited in a parenthetical requires its own “quoting” parenthetical, “the two parentheticals should be nested.”<sup>34</sup> Mercifully, the *Bluebook* allows that “only one level of recursion is required” when a quotation contains a quotation that quotes a third case (and so

1257, 1264 (11th Cir. 2017) (Hull, J.); and *King Soopers, Inc. v. NLRB*, 859 F.3d 23, 30 (D.C. Cir. 2017) (Edwards, J.).

28. *BLUEBOOK*, *supra* note 10, at 86 (Rule 5.3(c)), 83–84 (5.2(d)(i)–(iii)). Emphasis that appears in the original does not require a parenthetical. *Id.* at 84 (Rule 5.2(d)(iii)).

29. *Id.* at 83–84 (Rule 5.2(d)(i)).

30. *Id.* (giving the example “(alteration in original) (citation omitted)”; *see also id.* at 108 (Rule 10.6.3 (Order of Parentheticals))).

31. *Id.* at 84 (Rule 5.2(f)). This rule is new to the 20th edition of the *Bluebook*; many courts appear to have not yet caught up, continuing to use “(internal quotation marks omitted)” when they quote language that is entirely a quotation. *See, e.g.*, *Auto-Owners Ins. Co. v. Summit Park Townhome Ass’n*, 886 F.3d 852, 860 (10th Cir. 2018) (quoting a passage from *Erenhaus v. Reynolds*, 965 F.2d 916, 921 (10th Cir. 1992), with “(internal quotation marks omitted)” though the omitted marks would have been at the very beginning and very end of the quote); *Looney v. Moore*, 886 F.3d 1058, 1068 (11th Cir. 2018) (same, except quoting a passage from *Cain v. Howorth*, 877 So. 2d 566 (Ala. 2003)).

32. *Id.* at 84 (Rule 5.2(e) (“Quotations within quotations”)). Whether including the original source is “possible” is left open to interpretation.

33. *Id.*; *see also id.* at 108 (Rule 10.6.2 (“Quoting/Citing Parentheticals in Case Citations”)). Rule 10.6 describes an array of parentheticals to which it could potentially apply.

34. *Id.* at 108 (Rule 10.6.3).



on).<sup>35</sup> Yet it expressly forbids writers from omitting the “multiple levels of nested [quotation] marks” that those “quoting” parentheticals would have referred to.<sup>36</sup> It also offers no relief from explaining what happened to any ellipses, brackets, omitted citations, omitted footnotes, alterations in the original, emphasis added, or emphasis removed along the way.

### III. TOO MUCH INFORMATION

Although the *Bluebook* rules serve an important standardization purpose, they often are more trouble than they are worth after the first level of quotation.

The accumulation of redundant or irrelevant information often starts with the quotation marks that introduce a quote because Rule 5.2 forbids the omission of multiple levels of nested quotation marks even though it permits omitting citations to the corresponding decisions (other than the first “quoting” parenthetical).<sup>37</sup> The extra marks thus add visual clutter without providing any information that helps the reader evaluate the quotation.

In fact, the first “quoting” parenthetical—which identifies the opinion from which the quoted court was quoting—often fails to provide any useful information.<sup>38</sup> Although courts often quote controlling authority from a higher court, they also regularly quote their own prior cases and non-controlling authorities that they find persuasive. In those instances (absent something special about the earlier decision), a “quoting” parenthetical gives the reader information that the reader does not need because it does not advance the reader’s evaluation of the quotation beyond the authority of the court that used the quote.

The brackets, ellipses, and other indications required by Rules 5.2 and 5.3 likewise contain information that the reader

---

35. *Id.* (Rule 10.6.2).

36. *Id.* at 84–85 (Rule 5.2(f)(ii)).

37. *Id.* (indicating that writers may “not omit multiple levels of nested marks . . . even though ‘quoting’ parentheticals beyond the first level may be omitted”).

38. As a reminder: This is about a writer quoting court 1, which quoted court 2. The “quoting” parenthetical is a citation to court 2 appearing in the writer’s citation to court 1. Still with me?

does not need when applied to changes that a quoted authority made in the course of quoting some other authority. A court's decision is expressed in the words it uses in its opinion, not in the brackets and ellipses that might also appear in that opinion. So when the Tenth Circuit says that to evaluate police officers' use of force it applies "an objective standard, asking whether the facts available to the officer *at the moment* of the seizure would warrant a man of reasonable caution in the belief that the action taken was appropriate,"<sup>39</sup> that quote encompasses the court's standard even though part of the language was quoted from an earlier Tenth Circuit case, and even though the earlier case was altered with an ellipsis and a bracketed word addition.<sup>40</sup>

The unadorned quotation is easier to read without the additional quotation marks, brackets, and ellipsis, and its citation is less distracting and occupies fewer words without a "quoting" parenthetical.<sup>41</sup> Omitting the clutter also makes the quote much easier for the next judge or advocate to alter so that it fits in a new opinion or brief—it won't be necessary to sort out the old alterations from the new.

But the *Bluebook* does not expressly permit an author to remove brackets and ellipses. Under Rule 5.2, the author should leave those distractions in and add "(alterations in original)" to the citation as well.<sup>42</sup> Rule 5.2 aside, courts and practitioners

39. *United States v. Windom*, 863 F.3d 1322, 1329 (10th Cir. 2017) (cleaned up): "In evaluating the reasonableness of officers' use of force we apply an objective standard, asking whether the facts available to the officer at the moment of the seizure would warrant a man of reasonable caution in the belief that the action taken was appropriate." *Note*: This is foreshadowing.

40. Here is the full quote: "In evaluating the reasonableness of officers' use of force we apply an objective standard, asking whether the 'facts available to the officer at the moment of the seizure . . . [would] warrant a man of reasonable caution in the belief that the action taken was appropriate.'" *Windom*, 863 F.3d at 1329 (alterations in original) (quoting *United States v. Madrid*, 713 F.3d 1251, 1256 (2013)).

41. To see this, compare the version in note 40, which is seventy words, with the version in note 39, which is fifty-one words.

42. *BLUEBOOK*, *supra* note 10, at 83–84 (Rule 5.2(d)(i)). Lacking the option of "(alterations omitted)," Rule 5.2 produces confusing citations when combined with Rule 10.6.2, which requires "only one level of recursion" when a case quotes another case. *See id.* at 108. For example, the quotation from *Windom* in note 40 includes the ellipsis and bracketed change that appeared in the original and its citation both (1) notes that the court had quoted an earlier Tenth Circuit case (*Madrid*) and (2) includes "(alterations in original)." This suggests that the *Windom* court added the ellipsis and brackets to show its changes to language written by the court in *Madrid*. In fact, *Madrid* quoted that language from an earlier case; it added one of the two changes (the brackets) and the *Windom* court

regularly remove brackets and ellipses from quotations and indicate the omissions with “(brackets omitted)” and “(ellipsis omitted).”<sup>43</sup> Those nonstandard parentheticals allow the author to remove some clutter from the quotation but only by adding additional metadata clutter to the associated citation. In addition, all of these parentheticals suggest that the author should include a “quoting” parenthetical too. Otherwise, when “(alteration in original)” appears, the reader is left to wonder what original is being referred to. Signaling with “(brackets omitted)” and “(ellipsis omitted)” raises the same question. But of course the reader must first realize that those parentheticals mean that brackets or an ellipsis must have been omitted from something and that the something probably was some other authority, and then the reader can wonder about it. None of these parentheticals helps the reader understand or evaluate a quotation that relies on the quoted court’s own authority.

When forced to choose between placing excessive punctuation clutter in their quotations and lengthy, nonstandard parenthetical explanations in their citations, judges often choose the latter.<sup>44</sup> But there is a better way.

#### IV. CLEANING UP

I propose that all legal writers adopt the parenthetical (*cleaned up*) to avoid the clutter that quotations gather as they are successively quoted and altered from court opinion to court opinion, as well as the citation baggage that accumulates

---

added the other (the ellipsis). Although misleading, the citation is proper under the *Bluebook* because the alterations actually appeared in *Windom* (the putative “original” for purposes of Rule 5.2), and only one level of recursion is required under Rule 10.6.2.

43. *E.g.*, *Fulton Dental, LLC v. Bisco, Inc.*, 860 F.3d 541, 545 (7th Cir. 2017) (Wood, C.J.) (using “internal quotation marks and brackets omitted”); *Cobell v. Jewell*, 802 F.3d 12, 25 (D.C. Cir. 2015) (Millett, J.) (using both “internal quotation marks omitted” and “ellipsis omitted”).

44. *E.g.*, *Clark v. United States*, 695 Fed. App’x 378, 381 (10th Cir. 2017) (using “brackets, ellipses, and internal quotation marks omitted”); *Mayhew v. Town of Smyrna*, 856 F.3d 456, 463 (6th Cir. 2017) (using “brackets, citations, and quotation marks omitted”); *In re Amazon.com, Inc.*, 852 F.3d 601, 609, 610, 612 (6th Cir. 2017) (using “internal quotation marks and citation omitted,” “citation and brackets omitted,” and “citation, brackets, and ellipsis omitted”).

along the way.<sup>45</sup> Using *(cleaned up)* indicates that in quoting a court's decision the author—

- has removed extraneous, non-substantive material like brackets, quotation marks, ellipses, footnote reference numbers, and internal citations;
- may have changed capitalization without using brackets to indicate that change; and
- affirmatively represents that the alterations were made solely to enhance readability and that the quotation otherwise faithfully reproduces the quoted text.

Next, I propose a rule for using *(cleaned up)*, explain how it should be used, and demonstrate through examples drawn from recent cases how it can help authors streamline legal writing.

### A. The Proposed Rule

The *(cleaned up)* rule that I propose for inclusion in the *Bluebook* would appear as new Rule 5.4:

#### **Cleaning Up Quotations**

**(a) Cleaning up.** When language quoted from a court decision contains material quoted from an earlier decision, the quotation may, for readability, be stripped of internal quotation marks, brackets, ellipses, internal citations, and footnote reference numbers; the original sources of quotations within the quotation need not be cited parenthetically; and capitalization may be changed without brackets. Indicate these changes parenthetically with *(cleaned up)*. Other than the changes specified, the text of the quotation after it has been cleaned up should match the text used in the opinion cited. If the quotation is altered further, indicate the changes or omissions according to Rules 5.2 and 5.3.

---

45. An early draft of this essay suggested other possible forms for the parenthetical (e.g., cleaned, stripped, uncluttered, denuded, decluttered, detangled, tidied). Given how far *(cleaned up)* has spread, *see infra* Part V, the period during which we could have adopted a different term has all but closed, with one exception: the variant “(cleaned)” has acquired a judicial imprimatur and therefore is acceptable as a matter of law. *United States v. Abundez*, No. 5:13-cr-634-5, 2017 U.S. Dist. LEXIS 136656, at \*2 (S.D. Tex. Aug. 25, 2017). Even so, *(cleaned up)* seems well on its way to becoming the dominant form.

**(b) Cleaning up intermediary case citations.** In addition to the alterations described in Rule 5.4(a), when a quoted passage quotes a second case quoting a third case, the citation to the middle case may be omitted to show that the first court quoted the third. To indicate this change, retain the quotation marks around the material quoted from the third case and any alterations that were made to the quotation, and insert (cleaned up) before the “quoting” parenthetical citation to the third case. Indicate any alterations that were made to language quoted from the third case according to Rules 5.2 and 5.3.

### *B. How to Clean Up*

Using (*cleaned up*) is simple. To quote language from an opinion that includes a quotation from another opinion, simply enclose the words of the quotation itself within a single set of double quotation marks, leaving out brackets, ellipses, internal quotation marks and citations, and footnote reference numbers. Capitalize the first letter of the quotation if it begins your sentence; make it lower case if it does not. Cite the source of the quotation as if the words were original to the court you’re citing, and add (*cleaned up*) to the citation.

For example, take this passage from *Buchanan v. Maine*:<sup>46</sup>

“Plaintiffs claiming an equal protection violation must first ‘identify and relate specific instances where persons situated similarly in all relevant aspects were treated differently, instances which have the capacity to demonstrate that [plaintiffs] were singled . . . out for unlawful oppression.’” *Rubinovitz v. Rogato*, 60 F.3d 906, 910 (1st Cir. 1995) (alteration and omission in original) (emphasis added) (quoting *Dartmouth Review v. Dartmouth Coll.*, 889 F.2d 13, 19 (1st Cir. 1989), *overruled on other grounds by Educadores Puertorriqueos en Accion v. Hernandez*, 367 F.3d 61 (1st Cir. 2004)).<sup>47</sup>

This passage is particularly difficult to use under the ordinary rules. In addition to a bracketed change and ellipsis inherited

---

46. 469 F.3d 158 (1st Cir. 2006).

47. *Id.* at 178.

from the case that the court is quoting, the case *that* court quoted has a wordy and negative-sounding “overruled on other grounds” subsequent history. But to quote this passage in full using (*cleaned up*) is not difficult at all:

“Plaintiffs claiming an equal protection violation must first identify and relate specific instances where persons situated similarly in all relevant aspects were treated differently, instances which have the capacity to demonstrate that plaintiffs were singled out for unlawful oppression.” *Buchanan v. Me.*, 469 F.3d 158, 178 (1st Cir. 2006) (*cleaned up*).

Using (*cleaned up*) permits the author to treat the words of the quoted opinion as the opinion of the *Buchanan* court (which is what they are) even though they first appeared in an earlier opinion. The author can slough off the brackets and ellipses that came with the quote and eliminate all forty-nine words of the citation. That information is not lost—(*cleaned up*) signals that at least part of the quotation was itself a quotation, so the reader retains the option to check the author’s work. But the quote does not tax the reader with all the changes that the cited court (or an earlier court) made while adopting the language in the new opinion.

Using (*cleaned up*) also gives the author flexibility to fit the quote to the needs of the current document using the traditional signals for altering quotations. Without (*cleaned up*), making alterations to a multi-level, altered quotation can become so complex and confusing that most writers won’t attempt it. With (*cleaned up*), an author’s alterations are easily identified without confusion about what the first court may have altered from the second court.<sup>48</sup> Thus, when the passage below from *United States v. Rico*<sup>49</sup> is quoted using (*cleaned up*), the ellipsis signals material that author omitted. There is no need to distinguish it from alterations inherited from other cases.

Here is the original:

We have clarified that “[w]hile a PSR generally bears sufficient indicia of reliability, ‘[b]ald, conclusory statements do not acquire the patina of reliability by mere

---

48. For an example of the difficulty of attributing successive alterations to a quotation, see note 42 above.

49. 864 F.3d 381 (5th Cir. 2017).

inclusion in the PSR.” *United States v. Narviz-Guerra*, 148 F.3d 530, 537 (5th Cir. 1998) (second alteration in original) (citation omitted) (quoting *United States v. Elwood*, 999 F.2d 814, 817–18 (5th Cir. 1993)).

And here is the quoted version, which uses (*cleaned up*):

This Court has “clarified that while a PSR generally bears sufficient indicia of reliability,” that does not mean that “bald, conclusionary statements . . . acquire the patina of reliability by mere inclusion in the PSR.” *United States v. Rico*, 864 F.3d 381 (5th Cir. 2017) (*cleaned up*).

### C. (Cleaned Up) Examples

To demonstrate how (*cleaned up*) streamlines legal writing and eliminates unnecessary material, this section shows before and after versions of how several cases from a recent volume of the Federal Reporter might be quoted, with and without (*cleaned up*). In each example, the language on the left is just as it would appear if a writer quoted that part of the cited case using current *Bluebook* form. The language on the right shows how the same passage can be cited using (*cleaned up*).

In the first example, (*cleaned up*) reduces the number of words by twenty-seven percent (from forty-eight to thirty-five) and removes an ambiguous parenthetical about quotation marks:

The First Circuit “set[s] aside the ‘decision only where it rests on an error of law or reflects arbitrary or capricious decision making.’” *Aponte v. Holder*, 683 F.3d 6, 10 (1st Cir. 2012) (quoting *Chedid v. Holder*, 573 F.3d 33, 36 (1st Cir. 2009) (internal quotation marks omitted)).

The First Circuit “set[s] aside the decision only where it rests on an error of law or reflects arbitrary or capricious decision making.” *Aponte v. Holder*, 683 F.3d 6, 10 (1st Cir. 2012) (*cleaned up*).

In the next example (*cleaned up*) eliminates brackets and internal quotation marks and reduces the words in the passage by twenty-six percent (from seventy to fifty-two) by obviating a capitalization change (thus eliminating a parenthetical explanation to distinguish that change from an alteration in the original), eliminating an ellipsis (and the indication that it appeared in the original), and removing the need to cite a First Circuit case that the First Circuit quoted.

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.’” *Ayala 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.” *Ayala v. Holder*, 683 F.3d 15, 17 (1st Cir. 2012) (cleaned up).

The final example illustrates section (b) of the proposed (*cleaned up*) rule, which permits the author to cut out the middleman when a decision quotes a decision quoting a third. This will be useful, for example, when a federal court of appeals or a state court of last resort quotes its own prior case, which quotes the United States Supreme Court. Cleaning up the middleman decision does not make the quote inaccurate—the first decision has still quoted the Supreme Court even though the quotation appears within a middleman quotation. For example, suppose that the author wishes to show a recent Second Circuit decision, *Jabbar v. Fischer*,<sup>50</sup> quoting the Supreme Court.

The Second Circuit agreed “that prisoners may not be deprived of their “‘basic human needs—*e.g.*, food, clothing, shelter, medical care, and reasonable safety’”—and they may not be exposed ‘to conditions that “pose an unreasonable risk of serious damage to [their] future health.””” *Jabbar v. Fischer*, 683 F.3d 54, 57 (2d Cir. 2012) (per curiam) (alteration in original) (quoting *Phelps v. Kapnolas*, 308 F.3d 180, 185 (2d Cir. 2002) (per curiam) (quoting *Helling v. McKinney*, 509 U.S. 25, 32, 35 (1999))).

The Second Circuit agreed “that prisoners may not be deprived of their ‘basic human needs—*e.g.*, food, clothing, shelter, medical care, and reasonable safety’—and they may not be exposed to conditions that ‘pose an unreasonable risk of serious damage to [their] future health.”” *Jabbar v. Fischer*, 683 F.3d 54, 57 (2d Cir. 2012) (per curiam) (cleaned up) (alteration in original) (quoting *Helling v. McKinney*, 509 U.S. 25, 32, 35 (1999)).

---

50. 683 F.3d 54 (2d Cir. 2012).



Although the author in this example could quote *Phelps* directly to show that the Second Circuit quoted the Supreme Court, *Phelps* is ten years older than *Jabbar*. Further, that option would not be available if *Phelps* had been decided by a different circuit.

When (*cleaned up*) is used to eliminate the middleman, authors must be careful to ensure that the plain text attributed to each opinion in the citation is the same as the plain text that appears in that opinion. In this example, the bracketed alteration “[their]”—added by the *Jabbar* court—is retained because removing the brackets would inaccurately attribute that word to the Supreme Court. The same would not be true if the *Jabbar* court had altered language from *Phelps* (the middleman case) that was not part of *Phelps*’s quotation of *Helling* (the Supreme Court case). Cleaning up such a change would properly attribute the plain text to *Jabbar*, the court that added it. If the author wished to invoke the Second Circuit’s authority without relying on the Supreme Court, the brackets, quotation marks, and citation to *Helling* could all be eliminated.

## V. START CLEANING UP!

So far I have explained how lawyers’ and judges’ propensity to use quotations complicates writing when quotations are themselves quoted and requoted in later cases. I have shown that the clutter that attaches to quotations and the citation metadata that they accumulate often provides no meaningful information for readers but instead risks distracting them from the text and taxing their ability to assign weight to quotations as they read. And I’ve proposed a solution—(*cleaned up*)—and explained how it works. In this section I hope to convince you to begin using the new parenthetical in your writing.

If you’ve read this far, part of my job should already be done. You’ve probably done a lot of quoting, so the problems I have described should be more than familiar. And as my examples show, using (*cleaned up*) will make it easier to use quotations in your legal writing, give you more flexibility in how you use them, and result in citations that are less distracting for your audience without compromising any important

information. That will probably be enough for some of you; others will be more hesitant.

If you are still hesitating, your main objection is probably that you don't want to be the first one to adopt a new and untested citation convention. If you're a lawyer, you might be especially reluctant to have a judge see (*cleaned up*) for the first time in your brief, thinking that one of your opponents should take that chance. And if you are a judge, you probably don't want to be the first on your bench to take what feels like a radical step. I hope to overcome all of your objections and even provide an incentive.

Since (*cleaned up*) was first proposed, it has been used all over the country. What was once a plucky band of early adopters has become a nationwide movement working to make legal writing easier to read and also easier to write.

Perhaps the surest indicator that you can simplify your legal writing by using (*cleaned up*) right now is the number of judges and courts already adopting it. As of March 31, 2018, (*cleaned up*) has appeared in more than 150 judicial opinions. They come from four federal courts of appeals, twenty federal district courts, six state courts of last resort, six intermediate state appellate courts, and one state trial court, and were authored by forty-nine judges and joined by an additional eighty.<sup>51</sup>

That (*cleaned up*) has spread so quickly and been adopted so widely by the bench suggests that you will not be taking a great risk when you use the parenthetical in your own opinion or brief. The opinions already out there speak for themselves. As the Eighth Circuit put it: "'Cleaned up' is a new parenthetical used to eliminate unnecessary explanation of non-substantive prior alterations."<sup>52</sup> And according to the Utah Court of Appeals,

---

51. The Fifth, Sixth, Eighth, and Ninth Circuits have all used (*cleaned up*). *E.g.*, *United States v. Joiner*, No. 16-6833, 2018 WL 1211942 at \*4 n.2 (6th Cir. Mar. 8, 2018); *United States v. Steward*, 880 F.3d 983, 986 n.3 (8th Cir. 2017); *Lopez v. NAC Marketing Co., LLC*, 707 Fed. App'x 492, 493 (9th Cir. 2017) (per curiam); *United States v. Reyes*, 866 F.3d 316, 321 (5th Cir. 2017). A full list of the courts and judges using (*cleaned up*) is available from the author.

52. *Steward*, 880 F.3d at 986 n.3 (also explaining that use of (*cleaned up*) in this case eliminated "internal quotation marks, brackets, additional quoting parentheticals and an ellipsis"). Maryland's highest court has similarly explained that "'[c]leaned up' is a new parenthetical intended to simplify quotations from legal sources." *Lamalfa v. Hearn*, No.

“[t]he parenthetical ‘cleaned up,’ while perhaps unfamiliar, is being used with increasing frequency to indicate that internal quotation marks, alterations, and/or citations have been omitted from a quotation.”<sup>53</sup> Indeed, “[t]he ‘cleaned up’ parenthetical is fast gaining traction since first being proposed.”<sup>54</sup> Thus, as an opinion from the Southern District of Iowa concludes, “[t]he parenthetical (cleaned up) may be used when extraneous, residual, nonsubstantive information has been removed from a citation.”<sup>55</sup> This widespread judicial adoption of (*cleaned up*) should put to rest any concern that the judges with whom you hear cases—or before whom you practice—will react negatively to (*cleaned up*).

Lawyers have now used (*cleaned up*) in hundreds of briefs filed in courts at every level of the judicial system, spreading it well beyond the many courts where it has appeared in judicial opinions. By the end of March 2018, it had appeared in more than a dozen briefs filed in the United States Supreme Court, in briefs filed in almost every federal court of appeals, and in briefs filed in thirty-five federal district courts.<sup>56</sup> At the state level, it has appeared in briefs filed in the highest courts of fourteen states and the District of Columbia, eighteen intermediate state appellate courts, and eight state trial courts.<sup>57</sup>

---

39/17, slip op. at 23 n.5 (Md. filed Feb. 2, 2018) (“Use of (cleaned up) signals that to improve readability but without altering the substance of the quotation, the current author has removed extraneous, non-substantive clutter such as brackets, quotation marks, ellipses, footnote signals, internal citations or made un-bracketed changes to capitalization.”) *Id.* (cleaned up).

53. *State v. Cady*, 2018 UT App 8, ¶ 9 n.2 (Utah App. 2018).

54. *Tex. v. Marks*, No. 02-16-00434-CR2017, Tex. App. LEXIS 9868 at \*8 n.12 (Tex. App. Oct. 19, 2017) (noting that (*cleaned up*) had by then “found favor with at least one Texas Supreme Court justice and at the Fifth Circuit, among other courts around the country”); *see also, e.g.*, *Commonwealth v. Kehr*, 180 A.3d 754, 761 n.6 (Pa. Super. Ct. 2018) (describing (*cleaned up*)); *Sang Ho Na v. Gillespie*, 234 Md. App. 742, 174 A.3d 493, 499 n.2 (Md. Ct. Spec. App. Dec. 1, 2017) (same).

55. *Animal Legal Def. Fund v. Reynolds*, No. 4:17-cv-00362-JEG, 2018 U.S. Dist. LEXIS 38613, \*13 n.2 (S.D. Iowa 2018) (cleaned up).

56. The outlier federal courts of appeals are the D.C. Circuit and the Court of Appeals for the Armed Forces. A list of the district courts is available from the author.

57. The highest state courts are those in Alabama, Arizona, California, Florida, Kentucky, Maryland, Michigan, Mississippi, New York, Ohio, South Carolina, Texas, Vermont, and West Virginia, and also the highest court in the District of Columbia. A list of the state intermediate appellate courts and trial courts is available from the author.

And Bryan Garner, the country's leading expert on legal writing,<sup>58</sup> tweeted out his support in August 2017:



More recently, one of his weekly newsletters encouraged judges and lawyers to adopt it:

If a recent opinion quotes an earlier source, using ellipsis dots and brackets, and in quoting that opinion you need to add still more, it's fair to clean it up and simply signal that you've done so. The way to do that is to add "(cleaned up)" at the end of the citation. This signal solves a problem that is bound to grow worse as more and more opinions contain third- and fourth-generation repetitions of quotations.<sup>59</sup>

The Garner imprimatur should do away with any remaining doubt about the propriety of adopting (*cleaned up*).<sup>60</sup> And if even that is not enough, you can emulate some of the first courts to use (*cleaned up*), which used footnotes to refer their readers to published opinions in which it appeared.<sup>61</sup> Here's a model for a brief:

---

58. See SCALIA & GARNER, *supra* note 6 (indicating that Mr. Garner and Justice Scalia were collaborating authors); see also, e.g., Frank H. Easterbrook, *Foreword*, in *id.* at xxi, xxvi (referring to Mr. Garner as "the preeminent legal lexicographer of our time"); Carl S. Kaplan, *Ten Items or Less: A Reflection on the Third Edition of Bryan Garner's The Winning Brief*, 15 J. App. Prac. & Process 139, 140 (2014) (describing Mr. Garner as "the leading writer, teacher, editor, and evangelist for the plain style in legal writing—simple, clean, direct, and forceful").

59. Bryan A Garner, *LawProse Lesson 303: Cleaned-Up Quotations and Citations* (Mar. 3, 2018) (available from the author).

60. Although I don't know how large the LawProse email list might be, I know that Mr. Garner has over 23,000 Twitter followers. See <https://twitter.com/BryanAGarner>. And of course this issue of *The Journal of Appellate Practice and Process* is already in the hands of every federal and state appellate judge in the country. See UNIVERSITY OF ARKANSAS AT LITTLE ROCK WILLIAM H. BOWEN SCHOOL OF LAW, *The Journal of Appellate Practice and Process*, <http://ualr.edu/law/publications/the-journal-of-appellate-practice-and-process/>.

61. See *supra* notes 51–55.

This brief uses (cleaned up) to indicate that internal quotation marks, alterations, and citations have been omitted from quotations. *See, e.g.*, United States v. Reyes, 866 F.3d 316, 321 (5th Cir. 2017); Smith v. Ky., 520 S.W.3d 340, 354 (Ky. 2017); I.L. v. Knox Cty. Bd. of Educ., 257 F. Supp. 3d 946 & n.4 (E.D. Tenn. 2017).

And of course a judge could simply substitute “opinion” for “brief” in the first line of this model footnote.

Finally, if you’re not convinced by the precedent being set by federal and state judges; if you’re not inspired by the example of appellate practitioners across the country; if you’re not persuaded by the editor of *Black’s Law Dictionary*,<sup>62</sup> then—maybe a bribe? You should know that using (cleaned up) leads directly to internet fame and Twitter plaudits. Not only will you be helping your fellow judges and lawyers by using (cleaned up), when you send me your brief or opinion using the parenthetical, your name will be forever inscribed on the *Cleaned Up Roll of Heroes*. Post a picture of your use on Twitter,<sup>63</sup> and I will personally hail you as a legal-writing hero and send you a card saying so.<sup>64</sup>

## VI. CONCLUSION

The advocates and judges using (cleaned up) are working to create a better world for legal writers everywhere. Join us.




---

62. Bryan Garner again—every edition since the seventh in 1999. *See, e.g.*, BLACK’S LAW DICTIONARY (Bryan A. Garner ed., 10th ed. 2014); BLACK’S LAW DICTIONARY (Bryan A. Garner ed., 7th ed. 1999).

63. @SCOTUSPlaces. You’ll find me via #AppellateTwitter, a/k/a the “hot spot for legal nerds.”

64. Offer valid until there are too many heroes to keep track of.