



THE NEW PARENTHETICALS

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NOTED APPELLATE PRACTITIONER Jack Metzler last year proposed that we use the parenthetical “(cleaned up)” to indicate the omission of “messy quotation marks, ellipses, etc.” from a quoted authority.¹ This idea has taken hold, appearing in over 100 judicial opinions.² And for good reason: Often there’s nothing nefarious about the changes attorneys make to quotations, in which situations the “[m]any . . . ‘notation[s] we otherwise “commonly” see” accomplish nothing but to make a hash out of what might otherwise be effective arguments.³

But why stop at one new parenthetical? Let a thousand flowers bloom!⁴

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¹ Jack Metzler (@SCOTUSPlaces), Twitter (Mar. 15, 2017, 8:57 PM), twitter.com/SCOTUSPlaces/status/842223292752760832; see also Jack Metzler, *Cleaning Up Quotations*, 18 J. APP. PRAC. & PROCESS 143 (2017) (expanding on his tweet).

² See Eugene Volokh, *New Twist on Legal Citations: The “(Cleaned Up)” Parenthetical*, *The Volokh Conspiracy* (July 24, 2018), reason.com/volokh/2018/07/24/new-twist-on-legal-citations-the-cleaned.

³ And, of course, if a “(cleaned up)” citation is used unfairly, our adversarial system makes it unlikely the cheat will go unremarked.

⁴ This oft-used line is used here with tongue firmly in cheek, but in truth is in need of retiring. First, Chairman Mao purported to call for the flowering only of a *hundred* flow-

There are, I dare say, more new and brilliant parentheticals waiting to be discovered! You undoubtedly can come up with your own, but here are three, to get things started.

1. (*messed up*): This parenthetical shows that one has altered the formatting, usually by adding emphasis, to such an extent that the sweet, dulcet tones of the original have been transformed into the unrestrained screams of an ill-mannered partner. *E.g.*,

“Congress shall make *no law* . . . abridging the
FREEDOM of speech . . .” U.S. CONST.
amend. I (messed up).

2. (*the Bluebook made me do it*): The Bluebook has some inane rules. My personal pet peeve is the requirement, for statutes, of including in a citation the year that is on the spine of the compilation that is one’s source. I might be willing to ignore such follies, but a colleague might insist that a brief’s citations be more law-abiding. This new parenthetical could be just what I need.

As the prevailing party in this action under the
Copyright Act, Defendant should be awarded its
full costs. 17 U.S.C. § 505 (2018) (*the Bluebook
made me do it*).

3. (*all good*): Sometimes a source has an obvious typographical error. Should you fix it and add square brackets? Leave it and add a “[sic]”? Both options call attention to the error. This could be awkward when, for example, citing a prior opinion of the presiding judge.⁵ Perhaps a subtle parenthetical could do the trick – if the judge misspelled “statute” as “statue,”⁶

ers. Second, after thus inviting China’s intellectuals to critique his communist regime, Mao went on to purge those same gardeners in the Cultural Revolution. As a friend once remarked, after my breezy use of the phrase, “Yeah, that didn’t work out so well, now did it?”

⁵ Another option is just to fix the error quietly, without any indication. Opposing counsel can’t call out this shortcut without also inviting attention to the judge’s mistake. Game theory notwithstanding, however, some will find that approach too dicey.

⁶ As an aside, this author recommends that all lawyers add an entry to their word processor’s auto-correct dictionary, to correct from “statue” to “statute.” A career can easily be

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one could fix it and try something like:

As a noted jurist once remarked, “if the statute is clear, have no fear.” *Jane v. Jack*, 5 F. Supp. 4th 20, 24 (N.D. Cal. 2032) (all good).

And there, for your consideration, are three (parenthetical) flowers. Let the proletariat’s will determine whether any more should bloom.



completed without ever choosing to mention an actual statute in a brief; if the need unexpectedly arises, an automatic correction is easily overridden.