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String Citations-Part II

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The Scrivener: Modern Legal Writing



String Citations—Part II

by K.K. DuVivier

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The last *Scrivener* column¹ addressed how strings of citations generally are not effective in briefs: they do not give readers enough specific information about each authority, and they can so seriously interrupt an argument that they cause readers to lose the thread entirely. Consequently, in most briefs, it is better to eliminate string citations and replace them with a more in-depth explanation of the one or two most relevant authorities.²

However, string citations can be useful in some situations. For example, you may wish to use a string citation if you need to illustrate that there is a trend of authorities or that more than one case or jurisdiction supports the proposition you urge. String citations also are helpful when readers expect a comprehensive treatment of authorities.

In persuasive writing, you should not assume that your readers are familiar with the authorities cited. An explanatory parenthetical phrase can justify the space a string citation consumes in your brief by making an authority's relevance clear. To make your string citations more helpful for your readers, this column addresses some of the rules about explanatory parentheticals.

Placement

Explanatory parentheticals should come immediately after the source they explain. If the proposition referenced appears in a case that has been appealed, the parenthetical may come in the middle of the citation, before the subsequent history. However, when the proposition referenced appears in the later decision, the parenthetical should come at the end of the citation, after the final case.

DO YOU HAVE QUESTIONS ABOUT LEGAL WRITING?

K.K. DuVivier will be happy to address them through the *Scrivener* column. Send your questions to: kkduvivier@law.du.edu or call her at (303) 871-6281.

Example (when the parenthetical relates to the F. Supp. case):

Bensusan Restaurant Corp. v. King, 937 F. Supp. 295 (S.D.N.Y. 1996) (refusing to exercise personal jurisdiction when the defendant limited its advertising to a local audience), *aff'd*, 126 F.3d 25 (2d Cir. 1997).³

Example (when parenthetical relates to the F.2d case):

Parker v. Bd. Of Educ., 237 F. Supp. 222, 228-229 (D. Md. 1965), *aff'd*, 348 F.2d 464 (4th Cir. 1965) (agreeing that a teacher violated school regulations by assigning his class to read *Brave New World*).⁴

Order

There is a hierarchy within parenthetical phrases. Required parentheticals, such as case history and emphasis notes, should come before an explanatory parenthetical. However, if a parenthetical is required to explain the explanatory parenthetical information, that parenthetical goes last.

Example (required parenthetical for the original authority—comes before an explanatory parenthetical):

Fed. R. Civ. P. 30(1)(1999) (emphasis added) (also indicating that “[a] party may instruct a deponent not to answer . . . when necessary to preserve a privilege”).⁵

Example (parenthetical addressing the explanatory parenthetical—comes at the end):

Inker, *supra* n. 350, at 27 (explaining that “[d]omestic relations litigants may be particularly vulnerable because a spouse or former spouse can reveal confidential information that will embarrass or otherwise harm the other spouse” (emphasis added)).⁶

Content of Explanatory Parentheticals

Rule 1.5 of *The Bluebook* states that “[e]xplanatory parenthetical phrases begin with a present participle and should not begin with a capital letter.”⁷ However, that same *Bluebook* rule

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also states that "a shorter parenthetical may be substituted" when the context makes a complete present participle unnecessary.⁸

Example (using a present participle):

In re Kerr, 548 P.2d 297, 303 (Wash. 1976) (en banc) (finding that an attorney who knowingly participates in subordination of perjury should be disbarred).⁹

Example (using a shorter phrase):

Lloyd v. Cessna Aircraft Co., 430 F. Supp. 25, 26 (E.D. Tenn. 1976)(two days' notice unreasonable).¹⁰

Punctuating a Parenthetical

Generally, the information within a parenthetical is not treated as a complete sentence: the first letter is lower case and no punctuation is used at the end.¹¹ Instead, a period is placed at the end of the citation sentence, outside the parenthesis. However, if a parenthetical does contain a complete sentence, then closing punctuation, such as an ellipsis or a period, is used inside the parenthesis as well as at the end of the citation sentence.

Example 1: *Clark v. U.S.*, 289 U.S. 1, 15 (1933) ("The privilege takes flight if the relation is abused.")¹²

Example 2: Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 Mich. L. Rev. 2320, 2349 (1989)("We are a legalized culture. If law is where racism is, then law is where we must confront it. . . . [L]et us present a competing ideology. . .").¹³

Conclusion

Because they compress information into smaller spaces, string citations with explanatory parentheticals sometimes can be a valuable way of distinguishing cases. They are especially

good for simple comparisons. However, avoid the temptation to overuse them or to use them as a substitute for "explaining complicated and important authority."¹⁴ In persuasive writing, readers need to be convinced that the authorities support the result. In-depth explanations generally are more convincing than summary parentheticals, and it is better to use the text, rather than a parenthetical, for these full explanations. Readers may miss key information if it is shrouded in a forest of citations and squirreled away in what appears to be a parenthetical aside.

NOTES

1. DuVivier, "String Citations—Part I," 29 *The Colorado Lawyer* 83 (July 2000).

2. *Id.* at 83-84.

3. Example from Association of Legal Writing Directors and Dickerson, *The ALWD Citation Manual* (New York, NY: Aspen L. & Bus., 2000) at 311, Rule 47.2. See also Harvard Law Review Assoc., *The Bluebook: A Uniform System of Citation*, 16th ed. (Cambridge, MA: Gannett House, 1996) at 28, Rule 1.5.

4. Example from *The ALWD Manual*, *supra*, note 3 at 311.

5. *Id.* at 312.

6. *Id.* at 313.

7. *The Bluebook*, *supra*, note 3 at 28.

8. *Id.*

9. Examples from *The ALWD Manual*, *supra*, note 3 at 313.

10. *Id.*

11. *Id.* See also *The Bluebook*, *supra*, note 3 at 28.

12. *The ALWD Manual*, *supra*, note 3 at 313.


13. *The Bluebook*, *supra*, note 3 at 28.

14. *The ALWD Manual*, *supra*, note 3 at 312 (quoting Neumann, *Legal Reasoning and Legal Writing: Structure, Strategy, and Style* 3d ed. (New York, NY: Aspen L. & Bus., 1998) at 230, § 17.3. ■

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