

9-2018

Legal Citation Part III: Using Citation to Convey Textual Meaning

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Tenielle Fordyce-Ruff; Jason Dykstra, Legal Citation Part III: Using Citation to Convey Textual Meaning, 61 Advocate 52, 55 (2018).

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Legal Citation Part III: Using Citation to Convey Textual Meaning

Tenielle Fordyce-Ruff
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This month we will complete the citation trifecta. We've covered the language of citation and tips and tricks to create correct citations. Let's turn now to how to link citation to text to convey additional meaning to the reader.

Remember, at our core, attorneys are advocates, and one of the purposes of citation is to prove to the reader that she can trust your research—to prove that the law is what you state it is and that it works the way you've stated it does.

In addition to understanding the language of citation and using the correct form, citation can also increase the level of trust your reader will have in your positions in two ways: signals and explanatory parentheticals.

Citation signals

Signals provide the reader with great clues to the legal analysis underlying your position. Both major citation guides include a section on signals and agree on what they mean and how to use them.¹ Italicize signals and capitalize the first letter of signals that begin a citation sentence.

Signals are broken down into categories based on the type and degree of support or contradiction the authority provides for the contention in the text.

Indicating the strongest support: No signal

The easiest and most common signal is no signal at all!² Preface a citation with “no signal” signal when the authority provides direct support of the proposition in the textual sentence, is the source of a direct quote, or is the source of a general reference.



In practice, this means that no signal indicates the strongest degree of support.

Signals indicating support

While “no signal” technically indicates support, other signals do as well. Use these signals when you need to convey a more nuanced type of support for the textual proposition. Signals help the legal writer indicate varying types and differing degrees of support.

“E.g.” is an abbreviation for *exempli gratia* which means “for example.” It tells the reader that the cited authority is merely an example of many authorities that stand for the same proposition. This signal can also be combined with other signals: *but see, e.g.*

“Accord” is used when the text quotes or refers to the first citation in a citation sentence, but other authorities also lend support to the proposition in the textual sentence. It can also be used to let the reader know the law of one jurisdiction is essentially the same as that of another.

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“See” is used to let the reader know the cited authority provides only implicit support for the textual proposition. In other words, the reader would need to make an inference to get from the authority to your proposition. Consider using

an explanatory parenthetical with a “see” citation to help the reader follow the inference you want them to make.

“See also” lets the reader know one of two things. One: that the cited authority also provides support for the textual proposition. Or two: that the cited authority is in some way distinguishable from the other cited authority in the citation sentence. (Note, you should almost always use an explanatory parenthetical if you want to convey the idea that the two authorities are distinguishable.)

“C.f.” tells the reader that the cited authority supports the textual proposition only by analogy. This is another signal that should almost always be used with an explanatory parenthetical.

Compare: The signal drawing a comparison

We all know that the law can be messy and courts can reach different decisions on very similar facts. In such instances, you might want to let the reader know about the different results from the one you’ve stated in your text. In those instances, use “compare...with...” to draw out the different results for the reader. And of course, consider using an explanatory parenthetical to help guide the reader through the sources.

Signals indicating contradiction

Just as authorities can direct support, implicitly support, and support by analogy a proposition, authorities can also directly contradict, implicitly contradict, and contradict by analogy a proposition.

“Contra” lets the reader know that the cited authority directly contradicts the textual proposition.

“But see” tells the reader that the cited authority implicitly contradicts the textual proposition.

Just as authorities can direct support, implicitly support, and support by analogy a proposition, authorities can also directly contradict, implicitly contradict, and contradict by analogy a proposition.



And “But c.f.” is used to let the reader know the cited authority contradicts by analogy the textual proposition.

Signals indicating background material

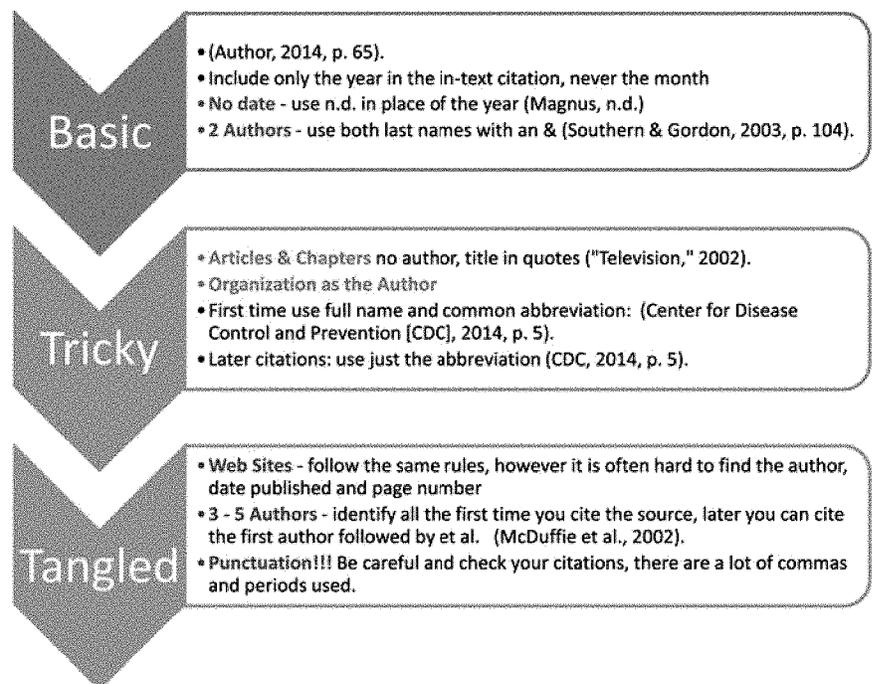
At times, the legal reader doesn’t need to understand every nuance or intricacy of an authority, but she might appreciate some background information. In those instances, use

“see generally” to let her know that the cited authority provides helpful background information for the textual proposition. It would also be helpful to the reader, when using “see generally” to include an explanatory parenthetical.

Explanatory parentheticals

In addition to using signals to help the reader understand your legal analysis, parentheticals can help the

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reader access additional detail about a cited source. Parentheticals consist of text enclosed in parentheses that conveys additional information about the cited source or text. For example, parentheticals commonly add information about a particular source such as the author of the opinion, (Burdick, C.J.), or provide details about the text cited. This added information about the text might include noting omissions from quoted materials (citations omitted) or identifying the cited text as dicta, a concurrence, or a dissenting opinion (Horton, J., dissenting).

Explanatory parentheticals give the legal writer the opportunity to concisely provide additional information to the reader explaining the relevance of the cited source. Generally, explanatory parentheticals follow the date parenthetical, separated by a single space. The common format for an explanatory parenthetical, the participle parenthetical, begins with a gerund (an “-ing” word) such as “holding” to concisely add additional information about the cited case. Because a participle phrase is not a complete sentence, do not capitalize the gerund or include a final punctuation inside the parentheses. For example: *Clark v. United States*, 289 U.S. 1, 15 (1933) (noting the fraud exception to the attorney-client privilege).

The key to crafting an effective explanatory parenthetical is distillation, omit extraneous words to help focus the reader on the most relevant details. Focus on brevity and be wary of long quotes, particularly those that require alteration with ellipses and brackets to fit into a parenthetical. But explanatory parentheticals can provide the perfect place to integrate persuasive, pithy quotes into your legal analysis.

When the parenthetical includes a complete sentence quoted from the source, capitalize the first letter

and include the final punctuation within the parenthetical. For example: *Clark*, 289 U.S. at 15 (“The privilege takes flight if the relation is abused.”). If you quote only a phrase from a source, format the parenthetical as a participle parenthetical.

As part of a string cite, explanatory parentheticals can effectively demonstrate that the law is well-settled, for example that a rule established long ago remains current. If a legal issue is unprecedented in your jurisdiction, a string cite can show the reader that the rule you advocate has been applied by other jurisdictions faced with similar legal issues. A string cite can also highlight different rules adopted by courts in various jurisdictions. Just remember to separate the cases in your string cites with semi-colons and do not use “and” before the last case in a string cite. Also, remain mindful that the real estate in your brief consumed by a string cite can quickly outstrip the reader’s attention span. So reserve string cites for rules that are either

well-settled or remain unprecedented in your jurisdiction.

Conclusion

Using signals and explanatory parentheticals can focus the reader’s attention on legally relevant details and bolster the persuasion of your legal writing. Together, signals and explanatory parentheticals in your citations can raise the level of trust your reader will have in your legal arguments.

Endnotes

1. This article provides only a useful overview of signals. For a more detailed look at the technicalities of using signals, such as the font of punctuation, see Coleen M. Barger, *ALWD Guide to Legal Citation* rule 35 (6th ed. 2017) or The Columbia Law Review et al., *The Bluebook: A Uniform System of Citation*, rule 1 (20th ed. 2015).
2. Yes, the absence of a signal before a citation is a signal itself. Coleen M. Barger, *ALWD Guide to Legal Citation* 300 (6th ed. 2017); The Columbia Law Review et al., *The Bluebook: A Uniform System of Citation* 58 (20th ed. 2015).

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