



PARENTHETICALS*

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Law students see parentheticals in judicial opinions, memos, briefs, restatements, law review articles, and other secondary sources. Some parentheticals are designed to make legal writing more detailed, while others might be used for concision. Using parentheticals can enhance your credibility with your legal audience. But an ill-conceived or improperly placed parenthetical can disrupt the flow of an argument or impair the reader's understanding of your text. This handout is designed to help you balance the risks and the rewards.

Parentheticals Precision

What is a parenthetical?

A parenthetical is an explanatory phrase included in parentheses at the end of a legal citation, and aims to provide helpful context for that citation. Parenthetical use is governed in part by *The Bluebook* and in part by our own writing objectives.

When to use parentheticals (Bluebook Rule 1.2):

The 22nd edition of *The Bluebook* revised Rule 1.2 to now require (as opposed to recommend) parentheticals for certain introductory signals. In addition to the signals where a parenthetical is explicitly required, a parenthetical is also required when the relevance of a cited authority might not otherwise be clear to the reader.

Parentheticals are <u>required</u> when you use this signal	Examples
<i>See also</i>	The court's order must be clear and unambiguous to support a civil contempt finding. <u>In re Gen. Motors Corp.</u> , 61 F.3d 256, 258 (4th Cir. 1995); <u>see also In re Dyer</u> , 322 F.3d 1178, 1191 (9th Cir. 2003) (holding that civil contempt requires the court's order be "specific and definite").
<i>Cf.</i>	The defendant's consultation with the court clerk before violating the court's order demonstrates a lack of criminal willfulness. <u>Cf. Burd v. Walters</u> , 868 F.2d 665, 668 (4th Cir. 1989) (noting that advice of counsel may be a defense in a criminal contempt proceeding because it negates the element of willfulness).

* Revised in 2025 by Kelsey Hanschuh based on earlier revisions by Richard Bernache, Halle Edwards, Karl Bock and Eric Nitz.

<i>See generally</i>	The doctrine of state sovereign immunity has a checkered history. <u>See generally</u> John Smith, <u>Administrative Law and Practice</u> , 210, 215–17 (2d ed. 1985) (tracing the history of state sovereign immunity from the English common law to the present).
<i>Compare...with</i>	<i>Compare</i> <u>Fleming v. Collins</u> , 954 F.2d 1109, 1112–14 (5th Cir. 1992) (en banc) (finding the public safety exception was met where officers had placed two men in custody who were found wrestling near the bank, the defendant was shot, and the officers immediately asked who shot him and where the gun was located), <i>with</i> <u>United States v. Webster</u> , 162 F.3d 308, 332 (5th Cir. 1998) (finding the police acted constitutionally when they asked the defendant if he had needles in his pockets that could harm them during their pat down since that information was necessary to protect the officers), <i>and</i> <u>United States v. Roberson</u> , 20 F.3d 1171, 1171 (5th Cir. 1994) (finding that the defendant’s responses to the officer’s questions about additional weapons was admissible under <u>Quarles</u> given that the officer had already found a knife in the defendant’s back pocket).
<i>Contrast...with</i>	<i>Contrast</i> <u>United States v. Green</u> , 388 F. App’x 375, 379–80 (5th Cir. 2010) (per curiam) (explaining the facts here barely suggest exigency circumstances that would justify the application of the exception where the officers asked about the presence of guns in a motel room before providing <i>Miranda</i> warnings because the defendant was placed under arrest outside of the room, no specific public threat existed, and the officers had time to administer the warnings prior to entering the motel room), <i>with</i> <u>Fleming v. Collins</u> , 954 F.2d 1109, 1112–14 (5th Cir. 1992) (en banc) (finding the public safety exception was met where officers had placed two men in custody who were found wrestling near the bank, the defendant was shot, and the officers immediately asked who shot him and where the gun was located).
<i>But Cf.</i>	Arachnophobia, a crippling, irrational fear of spiders, cannot qualify as a serious medical need. <i>But cf.</i> <u>Talbert v. Correctional Dental Assocs.</u> , 731 F. App’x 145, 150 (3d Cir. 2018) (noting that a crippling fear of needles may qualify as a serious medical need).

The use of parentheticals is required with these signals because the relevance of the citation will only make sense if it is explained. When you use these signals, parentheticals will help your reader understand the application of your citation to your argument.

Parentheticals in Practice (Bluebook Rule 1.5):

- 1. How to Phrase Parentheticals.** Parenthetical explanations are generally phrases that begin with a present participle, which is a form of a verb that ends with “ing.” The present participle that begins the parenthetical is never capitalized. If the meaning is clear from context, a short descriptive parenthetical may be used rather than a phrase beginning with a present participle.

Example: See De Long v. Hennessey, 912 F.2d 1144, 1147 (9th Cir. 1990) (remanding pre-filing injunction for failure to show that filings were numerous or abusive).

2. **The Use of Quotations in Parentheticals.** If your parenthetical includes a short phrase directly quoted from an authority, phrase it using a present participle as discussed above. However, if the parenthetical explanation consists entirely of a quotation of one or more full sentences (or part of a sentence that reads as a full sentence) then the following rules apply: the first word of the parenthetical should be capitalized, and the parenthetical should include the closing punctuation of the quoted sentence.

Example: United State v. Neal, 101 F.3d 993, 997 (4th Cir. 1996) (“[I]ndirect contempt may never be punished summarily, but rather requires adherence to more normal adversary procedures.”).

3. **Where Parentheticals Fit in the Citation Clause or Sentence.** Explanatory parentheticals come after parentheticals explaining weight of authority, such as (per curiam) or (Scalia, J., dissenting), and before any citation of subsequent history or other related authority.

Example: Wolf v. Colorado, 338 U.S. 25, 47 (1949) (Rutledge, J., dissenting) (rejecting the Court’s conception of the exclusionary rule), *aff’d* 187 P.2d 926 (Colo. 1947), overruled by Mapp v. Ohio, 367 U.S. 643 (1961).

Thankfully, *The Bluebook* spells out the order in which different parentheticals should appear in the citation in Rule 1.5(b):

(date) [hereinafter short name] (en banc) (Lastname, J., concurring) (plurality opinion) (per curiam) (alternation in original) (emphasis added) (footnote omitted) (citations omitted) (quoting another source) (citing another source) <http://www.domainname.com> (last visited) (explanatory parenthetical), prior or subsequent history.

When you have multiple parentheticals, consult the paragraph above and see which parentheticals are applicable to your citation.

4. **Formatting Nested Parentheticals.** When a parenthetical includes a quotation that requires its own parenthetical, you must nest the parentheticals.

Example: Abril-Rivera v. Johnson, 806 F.3d 599, 611 (1st Cir. 2015) (“Plaintiffs cannot force a government agency to keep open an *unsafe* facility which would have cost excessive sums to repair when there are alternate means by which the agency can accomplish its goals.” (emphasis added)).

Parentheticals Possibilities

Here are some examples of when parentheticals are most appropriate:

Explaining related authority: Often you may cite to a source for a particular proposition and wish to show that other sources lend some support to this proposition. Depending on the situation, you may introduce these additional sources with a see also or cf. signal.

Example: The Supreme Court has held that the Second Amendment protects an individual right to keep and bear arms. See District of Columbia v. Heller, 554 U.S. 570, 595 (2008); see also McDonald v. City of Chicago, 561 U.S. 742, 749 (2010) (applying the Second Amendment to the States).

Explaining the factual or legal context: A reader may benefit from added background, particularly when an extended analysis of the case is not necessary or appropriate. A parenthetical about the procedural posture or relevant facts of a case can help bolster your argument and show your reader that you are using the case appropriately.

Example: Enjoining a litigant from filing is an extremely harsh sanction to be used only in exigent circumstances. See De Long v. Hennessey, 912 F.2d 1144, 1147 (9th Cir. 1990) (remanding pre-filing injunction for failure to show that filings were numerous or abusive).

Using a Group of Cases: Parentheticals are particularly useful when the proposition you are putting forward is supported by a line of cases or is based on distinctions among a group of cases. When you intend to highlight either the similarities or differences between a group of cases, parentheticals can be a very efficient method. Be careful that your use of parentheticals does not take the place of a more extended case comparison when such a comparison is warranted. Notice how the following example uses parentheticals that are short but sufficiently detailed for the context in which they are used.

Example: Where a plea bargain or plea bargain-like agreement has been reached through a fair negotiation, the Ninth Circuit may allow that agreement to be interpreted utilizing contract law principles. See United States v. Chiu, 109 F.3d 624 (9th Cir. 1997) (proffer agreements); United States v. Partida-Parra, 859 F.3d 629 (9th Cir. 1988) (plea agreements); United States v. Irvine, 756 F.2d 708 (9th Cir. 1985) (cooperation-immunity agreements); United States v. Carillo, 709 F.3d 624 (9th Cir. 1983) (cooperation agreements).

Quoting language from a controlling authority: Extensive quoting in your main text may tend to break up the flow of your argument. You may want to include quotations from the controlling authority in parentheticals. Many readers appreciate that you have given them the words used by the authority. Consider, however, that if the quotation is particularly important, it may be better to include it in your main text, where it can be highlighted for the reader. Here is an example of the effective use of quotations in a parenthetical.

Example: While direct contempt can be punished summarily by the judge, indirect contempt can only be heard on notice and with procedural regularity. United State v. Neal, 101 F.3d 993, 997 (4th. Cir. 1996) (“[I]ndirect contempt

may never be punished summarily, but rather requires adherence to more normal adversary procedures.”).

Parenthetical Pitfalls

Before you decide to explain a case in a parenthetical, consider the following:

Pitfall #1: Parentheticals are a poor substitute for legal analysis. Parentheticals can provide an efficient means of communicating basic information about a source. However, parentheticals do not explain the relationship of the law to your set of facts as effectively as express legal analysis and may even detract from your central point. Read the following passage to yourself:

Sample

The commonplace item that Fox saw, a keychain with the victim’s etched initial, lacks features of immediately apparent contraband such as drugs or weapons. See D.C. Code Ann. § 33-564 (2000) (allowing warrantless seizures of controlled substances); United States v. Barckstrom, 252 A.2d 909, 910 (D.C. 1969) (noting that drugs and weapons are immediately apparent contraband). Commonplace items, even with suspicious identification, receive less deference. See Bynum, 386 A.2d at 687–88 (noting that tape recorder etched with name and address that searching officer recognized from robbery report was not immediately apparent contraband, in full probable cause analysis after holding seizure illegal because officer lacked legal access); Gant v. United States, 518 A.2d 103, 109 (D.C. 1981) (holding that clothing that matched suspect's profile “was not obvious” evidence). Similarly, the keychain lacks immediately incriminating features .

The writer refers to statutes and cases that seem to relate to her argument, but the use of parentheticals does not expressly connect the law to the facts of the case. Now look at the same argument after removing the parentheticals and weaving the law and facts together:

Parenthetical-free Sample

Fox’s warrantless seizure of the keychain with the victim’s etched initial was illegal. D.C. law permits the warrantless seizure of immediately apparent contraband, such as controlled substances, see D.C. Code Ann. § 33-564 (2015), and weapons, see United States v. Backstrom, 252 A.2d 909, 910 (D.C. 1969). However, courts are far less likely to uphold the warrantless seizure of commonplace items—even where those items bear suspicious identification. For example, in Bynum, an officer seized a tape recorder etched with a name and address that he recognized from a robbery report. The court declined to find that the tape recorder was immediately apparent contraband sufficient to support probable cause, and held that the seizure was illegal because the officer lacked legal access to the goods. Bynum, 386 A.2d at 687–88. Similarly, in Gant v. United States, 518 A.2d 103, 109 (D.C. 1981), the court held that clothing that matched the suspect’s “was not obvious” enough evidence to generate probable

cause to arrest. Just as the tape recorder in Bynum and the clothing in Gant were commonplace items lacking immediately incriminating features, so too is the keychain at issue in this case .

By removing the parentheticals, the writer's analysis becomes clearer to the reader, and the argument is more forceful.

Pitfall #2: Parentheticals can interrupt the flow of your argument. Now go back to the first sample passage and read it aloud. Did you pause every time you encountered a parenthetical? Was it difficult to keep track of how the argument was progressing? Parentheticals can disrupt the momentum of your argument if inserted carelessly.

Pitfall #3: Parenthetical text might be ignored by the busy reader. When writing your memo or brief, remember that your audience likely will be a busy attorney or judge. You can use this to your advantage. Because you know ahead of time that your reader may be impatient, why encourage her to skim—or even skip over—important pieces of your analysis? Try to compel your reader to absorb every part of your argument. Placing information in a parenthetical, rather than incorporating it into your main text, may send your reader a message that “this information is not very important.”

Putting it all Together: Should I Use a Parenthetical?

Before drafting a parenthetical, think about the following:

1. Know your audience.

- Does the lawyer, judge, or professor for whom you are writing have a preference regarding the use of parentheticals? The more you know about their “parenthetical preferences,” the better equipped you will be to use a parenthetical to your advantage.

2. Which signal precedes the citation?

- Remember that parentheticals are required when using the signals see also, see generally, cf., compare, and but cf.

3. What role does the cited source play in my analysis?

- If the source is central to your main argument, you probably should discuss it in the main text and avoid disposing of it in a parenthetical.
- If the source lends further support, but is not central to your analysis, a see also or cf. citation, followed by a parenthetical might be appropriate.
- If your reader will not understand why you cited a source unless you identify that source's factual or legal context, you should either provide that context in a parenthetical or discuss that source in your text.
- If you use the source to emphasize similarities to or distinctions from other cited sources, a parenthetical might be appropriate.

4. Will using a parenthetical clarify or disrupt the flow of my document?

- Try lining up a parenthetical-laden text and a parenthetical-free version side by side. Consider both versions. Do some parentheticals clarify more than others? Are some more disruptive than others? Choose the parentheticals that enhance the clarity of your argument, and cut the ones that disrupt the flow.