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ARTICLE

OKLAHOMA APPELLATE COURTS AND SECONDARY SOURCES

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I. INTRODUCTION

Treatises, law review articles, restatements, encyclopedias, American Law Reports, dictionaries, and other publications, collectively known as secondary sources, have many uses. They “explain, interpret, develop, locate, or update primary authorities” but are not law.¹ Legal research and

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1. STEVEN M. BARKAN, ET. AL, *FUNDAMENTALS OF LEGAL RESEARCH*, 2 (9th ed. 2009).

writing texts advise law students to always cite the law whenever possible and to only cite secondary sources in a few limited situations.²

Citations to secondary sources have been criticized on many grounds, including for not accurately representing the law, containing errors, and being beholden to special interests.³ One stern critic questioned the public's ability to respect judicial decisions influenced by secondary sources because those sources are “‘unknown, unrecognized and nonauthoritative text books, Law Review articles, and other writings of propaganda artists and lobbyists.’”⁴

Common law jurisdictions historically disfavored the citation of secondary sources. For example, it has been said that “‘in the not so distant past . . . it was considered unacceptable for an English appellate court to cite to a living secondary authority.’”⁵ Despite the criticism, citations to secondary sources “‘became quite prevalent” in judicial opinions throughout the twentieth century.⁶

This Article explores Oklahoma appellate courts' citation of secondary sources to understand why specific sources are cited and what influence sources have on an opinion. Data about the courts' citations to categories of sources are analyzed and compared with previous studies of other state and federal appellate courts. Opinions of the Oklahoma Supreme Court, Oklahoma Court of Civil Appeals, and Oklahoma Court of Criminal Appeals from 1976, 1996, and 2016–2020 were studied. This study should be of interest to appellate practitioners, scholars, and citizens. Lawyers may gain insights that help them determine when it is appropriate

2. CHRISTINA L. KUNZ, DEBORAH H. SCHMEDEMANN, ANN L. BATESON, MATTHEW P. DOWNS & MEHMET KONAR-STEENBERG, *THE PROCESS OF LEGAL RESEARCH*, 143 (7th Ed. 2008) (advising the citation of secondary sources when a jurisdiction has not considered the subject of the source, for policy or criticism, in support of diverging from current law, or for a general proposition or widely agreed upon principle).

3. Neil N. Bernstein, *The Supreme Court and Secondary Source Material: 1965 Term*, 57 *GEO. L. J.* 55, 62-63 (1968).

4. *Id.* at 63 (citing 103 *CONG. REC.* 16159, 16160 (1957) (remarks of Congressman Patman)).

5. Frederick Schauer & Virginia J. Wise, *Legal Positivism as Legal Information*, 82 *CORNELL L. REV.* 1080, 1088 (1997) (citing H.L.A. HART, *THE CONCEPT OF LAW* 92-107 (1961)).

6. Ellie Margolis, *Authority Without Borders: The World Wide Web and the Delegalization of Law*, 41 *SETON HALL L. REV.* 909, 918 (2011) (citing Wes Daniels, *Far Beyond the Law Reports: Secondary Source Citation in United States Supreme Court Opinions October Terms 1900, 1940, and 1978*, 76 *L. LIBR. J.* 1, 4-5 (1983)).

to cite secondary sources to an appellate court, which specific sources to cite, and how to make effective arguments using secondary sources.

This Article begins by discussing the precedential weight accorded to secondary sources in Oklahoma appellate opinions. Part II provides examples of secondary sources that persuade appellate courts and of appellate courts rejecting attempts at persuasion through secondary source citations. Part III explains the study's methodology and general findings, including the frequency of citation to secondary sources, the level of influence sources have on appellate opinions, and the reasons secondary sources are cited. Part IV details the citation of specific types of secondary sources in appellate opinions. The influence of computer assisted research on the appellate courts' citation of secondary sources is examined in Part V.

II. THE PRECEDENTIAL WEIGHT OF SECONDARY AUTHORITY IN OKLAHOMA LAW

A. Accepting Secondary Sources

Opinions of the Oklahoma appellate courts contain citations to a wide variety of sources. These citations serve a number of purposes “including explaining and justifying the reasons for the court’s decision, respecting stare decisis, and making the legal system predictable.”⁷ Oklahoma appellate courts are empowered by the Oklahoma Constitution to determine what form their opinions take.⁸ The Constitution does not require the appellate courts to cite any sources in their opinions.

Attorneys submitting briefs to Oklahoma appellate courts must cite to authorities to support their arguments.⁹ As a general rule, “[a]rgument in a brief unsupported by citations to legal authority will not be considered on appeal.”¹⁰ A few narrow exceptions to this rule may be found in Oklahoma appellate opinions. In *Mattes v. Baird*, the Oklahoma Supreme Court considered an appeal of a district court opinion granting liquidated damages for a breach of contract. In affirming the trial court’s decision,

7. Lee F. Peoples, *Citing Sisters: A Study of the Oklahoma Appellate Courts*, 72 OKLA. L. REV. 857, 857 (2020) (citing Fritz Snyder, *The Citation Practices of the Montana Supreme Court*, 57 MONT. L. REV. 453, 454 (1996)).

8. OKLA. CONST. art. VII, § 5.

9. OKLA. SUP. CT. R. 1.11(k)(1).

10. 5 HARVEY D. ELLIS, JR. & CLYDE A. MUCHMORE, OKLAHOMA PRACTICE SERIES: OKLAHOMA APPELLATE PRACTICE § 13:42 (2020 ed. 2018).

the Court noted that “the defendants refer to no authority” except for a case that the Court rejected as “obviously not in point.”¹¹ The Court was similarly critical of the plaintiff’s brief, noting that:

[T]he question is also lightly treated in the brief of the plaintiff, who contents himself with the assertion that such proof is unnecessary. The question is entitled to more consideration than has been accorded in the briefs of the parties, as will be apparent from an examination of the copious annotation on the subject contained in 34 A.L.R. 1336.¹²

The Court explained that it “indulges a presumption in favour of the correctness of the decision of the trial court and will not reverse a case upon an assignment of error unsupported by authority, if such authority is available, unless the error is apparent without further research.”¹³ Ultimately, the Court refused to overturn the decision of the trial court but articulated the possibility that, in the future, assignments of error unsupported by authority may be acceptable if authority is not available or if the error is apparent without further research. These exceptions have been explained in subsequent appellate opinions and in the *Oklahoma Appellate Practice* treatise.¹⁴

The term “authority” refers to primary sources of law including statutes, judicial opinions, administrative rules and regulations, and other sources. The term also includes secondary sources like the kind discussed in this Article. “Secondary sources are those publications that discuss or explain the law.”¹⁵ Secondary sources do not “have the power to control the outcome of a dispute. They can be more or less persuasive, but they are never controlling.”¹⁶

The authors of the *Oklahoma Appellate Practice* treatise note that the requirement for appellate attorneys to support all arguments with citations

11. *Mattes v. Baird*, 1935 OK 1077, ¶ 27, 55 P.2d 48, 53.

12. *Id.*

13. *Id.* at ¶ 28.

14. ELLIS, JR. & MUCHMORE, *supra* note 10, § 13:42 (citing *U.C. Leasing v. State ex rel. State Board of Public Affairs*, 1987 OK 43, ¶ 9, 737 P.2d 1191, 1194; *Vaughn v. Texaco, Inc.*, 1981 OK CIV APP 22, ¶ 7, 631 P.2d 1334, 1336; and *Brown v. Brown*, 1961 OK 227, 365 P.2d 385, 387).

15. DARIN K. FOX, DARLA W. JACKSON & COURTNEY L. SELBY, *OKLAHOMA LEGAL RESEARCH*, 38 (2013).

16. *Id.* at 4-5.

to authority includes secondary authorities.¹⁷ The authors also refer to the case of *FDIC v. B.A.S., Inc.*, where the Oklahoma Court of Civil Appeals allowed contractual language in dispute to count as authority for the purposes of the court rule requiring arguments to be supported by authority.¹⁸

Oklahoma appellate opinions have cited treatises by preeminent scholars when deciding cases in the subject matter of the scholar's expertise. Scholarship authored by faculty of the state's three law schools addressing Oklahoma law have been cited with some frequency. Treatises and articles by Professors Owen Anderson and Eugene Kuntz have been cited in opinions deciding oil and gas issues.¹⁹ Professor Alvin Harrell was cited by the Oklahoma Court of Civil Appeals in a case involving contracts and commercial law, areas of expertise for Professor Harrell.²⁰ Professor Dennis Arrow's constitutional law scholarship has been cited by the Oklahoma Supreme Court on several occasions.²¹ The scholarship of Professor Greg Eddington about the jurisdiction of Oklahoma's Court of Criminal Appeals was quoted extensively by the Oklahoma Supreme Court in a case involving that court's jurisdiction.²² An Oklahoma

17. ELLIS, JR. & MUCHMORE, *supra* note 10, § 13:42.

18. *Id.* (noting that "the court may have been applying a variety of the exception for error which is apparent without further research").

19. *Mittelstaedt v. Santa Fe Mins., Inc.*, 1998 OK 7, 954 P.2d 1203, 1214, 1216 (Opala, J., dissenting) (first citing Owen L. Anderson, *Royalty Valuation: Should Royalty Obligations Be Determined Intrinsically, Theoretically, or Realistically?, Part 1 (Why All The Fuss? What Does History Reveal?)*, NAT. RESOURCES J.; then citing EUGENE KUNTZ, *THE LAW OF OIL AND GAS* § 40.5, 351 (1989); and then citing Owen L. Anderson, *Wood v. TXO Production Corp.*, *Discussion Notes*, 125 OIL AND GAS REPORTER, Report No. 1 (12–95), at 155–161. *See also* *Hall v. Galmor*, 2018 OK 59, ¶ 46, 427 P.3d 1052, 1071 (citing Eugene Kuntz, *Statutory Well Spacing and Drilling Units*, 31 OKLA. L. REV. 344, 352 (1978); *XAE Corp. v. SMR Prop. Mgmt. Co.*, 1998 OK 51, ¶ 14, 968 P.2d 1201, 1204 (citing E. Kuntz, *THE LAW OF OIL AND GAS* § 55.3(3)).

20. *Tyree v. Cornman*, 2019 OK CIV APP 66, ¶ 24 n. 4, 453 P.3d 497, 507 n. 4 (citing Alvin C. Harrell, *The Duty to Speak in Contract Formation*, 89 OKLA. BAR J. NO. 5, at 6, 10 & nn. 54–55, February 2018).

21. *See* *In re Initiative Petition No. 364*, 1996 OK 129, 930 P.2d 186, 207 (citing Dennis W. Arrow, *Representative Government and Popular District: The Obstruction/Facilitation Conundrum Regarding State Constitutional Amendment by Initiative Petition*, 17 OKLA. CITY U. L. REV. 5, 8 (1992)). *See also* *Freeman v. State Election Bd.*, 1998 OK 107, 969 P.2d 982, 990 (citing Dennis W. Arrow, *The Dimensions of the Newly Emergent Quasi—Fundamental Right to Political Candidacy*, 6 OKLA. CITY U. L. REV. 1 (1981)).

22. *City of Oklahoma City v. Balkman*, 2020 OK 104, ¶ 7, 482 P.3d 731, 734 (citing Greg Eddington, *The Jurisdictional Boundary Between the Oklahoma Supreme Court and*

Supreme Court case involving a challenge to the location of a Ten Commandments monument on the grounds of the State Capitol cited the work of Professor Andrew Spiropoulos.²³ The Oklahoma Supreme Court quoted Professor Charles Adams's work on Oklahoma civil procedure in a case involving a challenge to in personam jurisdiction.²⁴

Oklahoma appellate courts often cite the most highly regarded treatises in particular areas of law when they decide cases dealing with these areas of law. For example, the well-known work of Kenneth Culp Davis in the area of administrative law has been cited several times by the Oklahoma Supreme Court when confronting administrative law issues.²⁵ The often-cited *Prosser on Torts* treatise has been cited frequently by Oklahoma appellate courts when deciding issues of tort law.²⁶ When examining issues of insurance law, the Oklahoma appellate courts have turned to the standard treatise in the field, *Couch on Insurance*.²⁷

In some opinions, Oklahoma appellate courts are careful to explain or qualify their use of specialized secondary sources. For example, in *National Union Fire Insurance Co. v. A.A.R. Western Skyways, Inc.*, the Oklahoma Supreme Court utilized the secondary source *Words and Phrases*.²⁸ This source provides citations to case law from across the country that have judicially defined terms. In the *National Union Fire* case, the meaning of the term *prorata* was at issue. In her dissenting opinion, Justice Wilson referred to "various dictionaries and other

the Court of Criminal Appeals: Blurred Lines, 69 OKLA. L. REV. 203, 204-206 (2017)).

23. *Prescott v. Oklahoma Capitol Pres. Comm'n*, 2015 OK 54, 373 P.3d 1032, 1051 (citing Andrew C. Spiropoulos, *Right Thinking: Faith Grows Amid Opposition*, The Journal Record, Sept. 24, 2014).

24. *Powers v. Dist. Ct. of Tulsa Cty.*, 2009 OK 91, ¶ 7, 227 P.3d 1060, 1068 (citing David S. Clark & Charles W. Adams, *Oklahoma Civil Pretrial Procedure: Jurisdiction, Service of Process, Venue, Motions to Dismiss Under Section 2012*, § 10.1, 253, 257 (1995)).

25. *Sw. Bell Tel. Co. v. Oklahoma Corp. Comm'n*, 1994 OK 38, 873 P.2d 1001, 1010 (citing 3 K. DAVIS, ADMINISTRATIVE LAW TREATISE § 19.09 (2d ed. 1980); *Tibbetts v. Sight 'n Sound Appliance Centers, Inc.*, 2003 OK 72, 77 P.3d 1042, 1062 (first citing 2 KENNETH CULP DAVIS AND RICHARD J. PIERCE, JR., ADMINISTRATIVE LAW TREATISE § 10.6, at 154 (3d ed. 1994); and then citing Kenneth Culp Davis, *Judicial Notice*, 55 COLUM. L. REV. 945, 952 (1955)).

26. *Parret v. UNICCO Serv. Co.*, 2005 OK 54, ¶ 13, 127 P.3d 572, 576.

27. *Kentucky Bluegrass Contracting, LLC v. Cincinnati Ins. Co.*, 2015 OK CIV APP 100, 363 P.3d 1270, 1276 (citing 9A COUCH ON INSURANCE § 129:4 (3rd Ed.) ("What does and does not constitute an 'occurrence'—Examples")).

28. *Nat'l Union Fire Ins. Co. v. A.A.R. Western Skyways, Inc.*, 1989 OK 157, ¶ 2 n.1, 784 P.2d 52, 60 n. 1 (Wilson, J. dissenting).

persuasive authorities [that indicate] pro rata is synonymous with the term proportionate.”²⁹

Oklahoma appellate courts have acknowledged the specific precedential authority of certain specialized sources. The American Bar Association’s Committee on Ethics and Professional Responsibility issues formal and informal ethics opinions.³⁰ In most jurisdictions the opinions are considered to be “persuasive [authority] to show how the ABA has interpreted the Mode[l] Rules [of Professional Conduct].”³¹ In *Fritz v. State* the Oklahoma Court of Criminal Appeals denied an effective assistance of counsel claim by a criminal defendant whose attorney was married to the assistant district attorney who filed a pleading in the defendant’s criminal case.³² The Court relied on *A.B.A. Formal Op. 340* in making its decision and found the opinion to be persuasive authority.³³

Oklahoma, like other states, has adopted title examination standards. Oklahoma’s title standards are the product of “an extensive study of established standards for determining a marketable or merchantable title to real property under the law of Oklahoma.”³⁴ In *Knowles v. Freeman* the Oklahoma Supreme Court considered the appeal of a district court judgment “reforming a mineral deed and quieting title” in mineral interests.³⁵ The Court’s opinion clarified that the Oklahoma “Title Examination Standards are not binding upon th[e] Court,” but “by reason of the research and careful study prior to their adoption and by reason of their general acceptance among the members of the bar of this state since their adoption, [the Court] deem[s] such Title Examination Standards and the annotations cited in support thereof to be persuasive.”³⁶

Oklahoma appellate courts have utilized secondary sources when determining legislative intent or interpreting the Oklahoma Constitution. In *State ex rel. Blankenship v. Freeman*, the Oklahoma Supreme Court was asked to determine whether acts of Corporation Commissioners

29. *Id.*

30. LEE F. PEOPLES, *LEGAL ETHICS: A LEGAL RESEARCH GUIDE*, 39 (2d ed. 2006).

31. *Id.*

32. *Fritz v. State*, 1986 OK CR 181, 730 P.2d 530, 535.

33. *Id.* The Ethics Opinion states, “It is not necessarily improper for husband-and-wife lawyers who are practicing in different offices or firms to represent differing interests. No disciplinary rule expressly requires a lawyer to decline employment if a husband, wife, son, daughter, brother, father, or other close relative represents the opposing party in negotiation or litigation.”

34. *Knowles v. Freeman*, 1982 OK 89, 649 P.2d 532, 535.

35. *Id.* at 533.

36. *Id.* at 535.

constituted forfeiture or vacation of their offices.³⁷ The Oklahoma Attorney General argued the commissioners' acceptance of free transportation aboard an aircraft owned by oil companies was a violation of their oath of office and disqualified them from holding office under the Oklahoma Constitution.³⁸ The Court found the Attorney General's proposed construction of the Constitution was "not in harmony with its specific language."³⁹ The Court cited Albert H. Ellis's book *A History of the Constitutional Convention of the State of Oklahoma* to assist them in applying the relevant constitutional provisions. The Court noted that, "Although the opinion of Mr. Ellis as to the construction of Sec. 2, supra, is not controlling, it is persuasive . . ."⁴⁰ The Court based its holding (that it did not have jurisdiction to make a determination that the Corporation Commissioners violated their oaths) in part on Mr. Ellis's writings about the Oklahoma Constitution.⁴¹

Judicial opinions from other states have been used as secondary sources by Oklahoma appellate courts.⁴² In *Consolidated Flour Mills Co. v. Muegge* the Oklahoma Supreme Court confirmed that "[a]s to decisions of state courts, which, of course, are secondary authorities on this particular question, we have given consideration and approval to the case[] of . . . *John Deere Plow Co. v. Wyland et al.*"⁴³ In this older opinion, the Court cites *John Deere*, a Supreme Court of Kansas opinion, for guidance on when a judgment in personam may be rendered against a foreign corporation.⁴⁴ Similarly, in *Carter v. Rathburn* the Oklahoma Supreme Court considered opinions decided by the Supreme Court of West Virginia in deciding a constitutional law question related to an appropriations bill. The Court noted that the provisions of the Oklahoma Constitution at issue in the case were identical to provisions of the West Virginia Constitution and that "the decisions of that court upon the identical question presented here should be strongly persuasive with this court."⁴⁵

37. State *ex rel.* Blankenship v. Freeman, 1968 OK 54, 440 P.2d 744, 748.

38. *Id.* at 753.

39. *Id.*

40. *Id.* (noting that Mr. Ellis was Second Vice President of the Constitutional Convention and Speaker Pro Tempore of the First State Legislature).

41. *Id.* at 753-54.

42. For a comprehensive account of how Oklahoma appellate courts use judicial opinions from other states, see Peoples, *Citing Sisters: A Study of the Oklahoma Appellate Courts*, *supra* note 7, at 857-901.

43. *Consol. Flour Mills Co. v. Muegge*, 1927 OK 262, 260 P. 745, 748.

44. *Id.* (citing *John Deere Plow Co. v. Wyland*, 76 P. 863 (Kan. 1904)).

45. *Carter v. Rathburn*, 1922 OK 105, 85 Okla. 251, 209 P. 944, 948.

B. Rejecting Secondary Sources

Oklahoma appellate courts have refused to be persuaded by judicial opinions from other states. In *Hamilton v. Telex Corp.*, the Oklahoma Supreme Court opinion noted that the appellant cited “numerous secondary authorities. Upon examination we have found those cases to be of no persuasive effect”⁴⁶ In *Concorde Resources Corp. v. Williams Production Mid–Continent Co.*, the Oklahoma Court of Civil Appeals was not persuaded by a Texas appellate opinion cited by a party, stating bluntly, “The literal application of the secondary authority [cited by] *Hydrocarbon Management, Inc.* is contrary to Oklahoma jurisprudence as well as that of other jurisdictions.”⁴⁷

The Oklahoma Court of Civil Appeals refused to find a duty of care existed or had been breached in *James v. O’Neal*.⁴⁸ The opinion noted the plaintiff’s attempt to support the alleged duty with a cite to “a secondary source for a general principle that if one attempts to care for an injured person they are required to provide proper care.”⁴⁹ Similarly in *Carista v. Valuck* the plaintiff cited the U.S. Drug Enforcement Administration’s *Pharmacists Manual* “as authority for a tort duty.”⁵⁰ The opinion stated that the court did not have a copy of the document and could not find a reported case from any jurisdiction “utilizing or examining this USDEA publication as a source of law, guidance, or persuasive authority in a tort case, or in any other case.”⁵¹ The court directly rebuffed the plaintiff’s efforts stating, “We decline to take the unprecedented step of declaring that a federal publication of unknown content establishes a tort not previously recognized by our Supreme Court.”⁵²

A final example of the rejection of secondary sources comes from the Oklahoma Supreme Court opinion in *Cannon v. Cassidy*.⁵³ In this case, lessors of an oil and gas lease attempted to persuade the Court that the lessees’ non-payment of royalties breached an implied covenant to market. The opinion noted that the lessors:

46. *Hamilton v. Telex Corp.*, 1981 OK 22, 625 P.2d 106, 108.

47. *Concorde Res. Corp. v. Williams Prod. Mid–Continent Co.*, 2016 OK CIV APP 37, ¶ 40, 379 P.3d 1157.

48. *James v. O’Neal*, 1992 OK CIV APP 49, 838 P.2d 31, 32.

49. *Id.*

50. *Carista v. Valuck*, 2016 OK CIV APP 66, ¶ 8, 394 P.3d 253, 257.

51. *Id.*

52. *Id.*

53. *Cannon v. Cassidy*, 1975 OK 151, 542 P.2d 514, 516.

rel[ied] on the suggestion by Earl A. Brown in his two volume work, *LAW OF OIL AND GAS*, 2nd Ed., *LEASES*, at § 6.02 that the implied covenant to market should be seen as a two-pronged obligation including both the sale of the products and payment to lessor of his share of the proceeds.⁵⁴

The court rejected this attempt, commenting that, “Neither Mr. Brown’s opinion or lessors’ arguments persuade us to adopt the notion that payment of royalties comes within the ambit of the implied covenant to market.”⁵⁵

III. METHODOLOGY AND STUDY FINDINGS

This study explores the use of secondary authority by the Oklahoma Supreme Court, Oklahoma Court of Civil Appeals, and Oklahoma Court of Criminal Appeals. Opinions from the years 1976, 1996, and 2016–2020 were examined and analyzed for their use of secondary authority. The years examined in this study parallel the evolution of electronic legal research and permit exploration of the effects of electronic legal research on the citation of secondary sources by the Oklahoma appellate courts.

Several law student research assistants reviewed all opinions issued by Oklahoma appellate courts during the seven years included in this study. Students recorded data from any opinion citing a secondary source into a Google Docs spreadsheet. Data recorded included: the jurisdictional basis of the opinion; reason a source was cited;⁵⁶ level of influence a source had on the opinion;⁵⁷ any citation signal used when citing a secondary source; whether secondary sources appeared in the majority, plurality, concurring, or dissenting opinion; and the citation to the secondary source. A source cited multiple times in a single opinion was only counted once. The instructions followed by law student research assistants in compiling the study data are attached as Appendix A.

54. *Id.*

55. *Id.*

56. The methodology for categorizing the reason a source was cited is explained in more detail in Section III C-E and was adapted from Bernstein, *supra* note 3, at 69.

57. The methodology for categorizing the level of influence a source had on the opinion is explained in more detail in Section III D and was adapted from Richard G. Kopf, *Do Judges Read the Review? A Citation-Counting Study of the Nebraska Law Review and the Nebraska Supreme Court, 1972-1996*, 76 NEB. L. REV. 708, 719–20 (1997).

TABLE 1
 OKLAHOMA APPELLATE COURTS CITATION FREQUENCY
 PERCENTAGE OF OPINIONS CITING SECONDARY SOURCES

<i>Year</i>	<i>% of Oklahoma Supreme Court opinions citing any secondary source</i>	<i>% of Oklahoma Court of Civil Appeals opinions citing any secondary source</i>	<i>% of Oklahoma Court of Criminal Appeals opinions citing any secondary source</i>
1976	26%	34%	8%
1996	43%	10%	3%
2016	23%	14%	0%
2017	18%	46%	8%
2018	18%	23%	18%
2019	15%	18%	17%
2020	13%	24%	9%

TABLE 2
OKLAHOMA APPELLATE COURTS CITATION FREQUENCY
CITATION TO POSITIVE LAW VS. SECONDARY SOURCES

Year	Oklahoma Supreme Court Citations to Positive Law	Oklahoma Supreme Court Citations to Secondary Sources & % of Citations to Secondary Sources	Oklahoma Court of Civil Appeals Citations to Positive Law	Oklahoma Court of Civil Appeals Citations to Secondary Sources & % of Citations to Secondary Sources	Oklahoma Court of Criminal Appeals Citations to Positive Law	Oklahoma Court of Criminal Appeals Citations to Secondary Sources & % of Citations to Secondary Sources
1976	2,187	96 (4%)	627	79 (13%)	2,964	39 (1%)
1996	3,396	138 (4%)	1,586	17 (1%)	1,607	2 (< 0%)
2016	2,172	66 (3%)	1,487	18 (1%)	760	1 (< 0%)

A. Citation Frequency

Over the past forty-five years, the Oklahoma appellate courts have cited secondary sources sparingly. The Oklahoma Supreme Court has cited secondary sources more frequently than the Court of Civil Appeals or Court of Criminal Appeals. The Supreme Court's use of secondary sources is appropriate given its role as the ultimate arbiter of Oklahoma law.⁵⁸

Oklahoma appellate courts' rate of citing secondary sources is generally in line with the practices of other state appellate courts. The Virginia and Wisconsin state appellate courts cited secondary sources less than 100 times in 2017.⁵⁹ That citation rate is roughly comparable to the

58. The Oklahoma Constitution explains that "[T]he appellate jurisdiction of the Supreme Court shall be co-extensive with the State. . . ." OKLA. CONST. art. VII, § 4.

59. Mark Cooney, *What Judges Cite: A Study of Three Appellate Courts*, 50 STETSON L. REV. (OPEN ISSUE) 1, 26 (2020).

eighty-five citations to secondary sources appearing in all Oklahoma appellate opinions in 2016. Citations to secondary sources accounted for only 4.1% of citations in Ohio Supreme Court opinions in 1990.⁶⁰ The Ohio Supreme Court's citation rate in 1990 is comparable to the Oklahoma Supreme Court's 4% rate of citation to secondary sources in 1996.

Other appellate courts cite secondary sources at higher rates than Oklahoma appellate courts. The United States Supreme Court ("SCOTUS") cited secondary sources at a rate of 6% in 2015, double the Oklahoma Supreme Court's secondary source citation rate of 3% in 2016.⁶¹ The percentage of New York Court of Appeals opinions containing citations to secondary sources is much higher than the percentage of Oklahoma appellate opinions citing secondary sources. The percentage of New York Court of Appeals' opinions containing citations to secondary sources from 1970 to 2000 ranged from a low of 41.1% to a high of 74.4%.⁶² Comparatively, the percentage of Oklahoma Supreme Court opinions citing secondary sources for the seven years examined in this study ranged from a low of 13% to a high of 43%.⁶³

The Oklahoma Supreme Court's citation of secondary sources has declined over time. As depicted in Table 1, 26% of Oklahoma Supreme Court opinions cited a secondary source in 1976. The percentage of Oklahoma Supreme Court opinions citing a secondary source declined to just 13% in 2020. This decline mirrors the results found in studies of other state appellate courts. A study of the Arkansas appellate courts discovered a "steady decline" in citations to all types of secondary sources except dictionaries from 1950 to 2000.⁶⁴ The percentage of Arkansas Supreme Court opinions citing secondary sources fell from 43% in 1950 to 26% in 1970 and continued to fall until reaching 14% in 2000.⁶⁵ Similarly, a study of Kansas appellate courts revealed that the percentage of citations to secondary sources in opinions of the Kansas Supreme Court declined from 15.3% in 1935, to 8.8% in 1965 and finally to just 2% in 1995.⁶⁶

60. James Leonard, *An Analysis of Citations to Authority in Ohio Appellate Decisions Published in 1990*, 86 L. LIBR. J. 129, 145 (1994).

61. Cooney, *supra* note 59, at 11, 27.

62. William H. Manz, *The Citation Practices of the New York Court of Appeals: A Millennium Update*, 49 BUFF. L. REV. 1273, app. at 1306 (2001) (Table 14).

63. See Table 1.

64. A. Michael Beard, *Citations to Authority by the Arkansas Appellate Courts, 1950 – 2000*, 25 U. ARK. LITTLE ROCK L. REV. 301, 320 (2003).

65. *Id.* app at 344 (Table 19).

66. Joseph A. Custer, *Citation Practices of the Kansas Supreme Court and Kansas*

B. *Jurisdiction Did Not Impact Secondary Source Citation*

The jurisdiction of Oklahoma's three appellate courts is detailed in the Oklahoma Constitution. The Oklahoma Supreme Court's jurisdiction is the broadest of the three courts and is set out in the Oklahoma Constitution as "coextensive with the State" and extending "to all cases at law and in equity[,] except criminal cases."⁶⁷ The Oklahoma Constitution's grant of original jurisdiction to the Oklahoma Supreme Court includes the ability to control inferior courts.⁶⁸ Oklahoma Supreme Court cases can be organized into five broad categories: (1) appeals retained for initial decisions, including those from district court decisions; (2) appeals of decisions of the Court of Civil Appeals; (3) original actions for extraordinary writs; (4) certified interlocutory appeals; and (5) certified questions of law.⁶⁹

The state's remaining two appellate courts have more restricted jurisdiction, with the Court of Civil Appeals having general appellate jurisdiction and the ability to review certified interlocutory orders.⁷⁰ Jurisdiction over criminal cases is reserved for the Court of Criminal Appeals.⁷¹

"The jurisdictional basis of a case" does not appear to impact the Oklahoma Supreme Court's decision to cite or not cite secondary sources in the Court's opinion.⁷² The total numbers of Oklahoma appellate opinions citing secondary sources during the years examined in this study are depicted at Table 1. Oklahoma Supreme Court opinions most frequently cite secondary sources in original proceedings and where the Court is reviewing petitions for certiorari or petitions in error. These three categories of cases are the type most frequently accepted by the Oklahoma Supreme Court. The Court likely cites secondary sources most frequently in these cases because these cases are most often before the Court and provide more opportunities for the citation of secondary sources.

These findings mirror the results reported in *Citing Sisters: A Study of the Oklahoma Appellate Courts*.⁷³ That study examined the Oklahoma

Court of Appeals, 8 KAN. J. L. & PUB. POL'Y 126, app. at 136 (1998) (Table 1).

67. OKLA. CONST. art. VII, § 4.

68. *Id.*

69. ELLIS, JR. & MUCHMORE, *supra* note 14, § 1:18, at 27.

70. *Id.* § 1:35, at 38.

71. *Id.* § 1:51, at 46 (quoting OKLA. CONST. art. VII, § 4).

72. Peoples, *Citing Sisters*, *supra* note 7, at 885.

73. *Id.*

appellate courts' citation of cases from other state appellate courts and found the Oklahoma Supreme Court cited the most out-of-state cases in the three jurisdictional categories most frequently accepted by the Court.⁷⁴

TABLE 3
JURISDICTIONAL BASIS & THE CITATION OF SECONDARY SOURCES

<i>Jurisdictional Basis</i>	<i>Total Opinions Citing Secondary Sources</i>
Type of Case Before Oklahoma Supreme Court	
Appellate Jurisdiction – Appealable Decision of Another Court – Petition in Error	76
Petition for Rehearing	27
Petition for Certiorari	55
Accelerated Appeal	5
Certified Interlocutory Appeal	5
Appeal from a Tribunal Other Than District Court	0
Original Jurisdiction (includes bar disciplinary matters)	29
Certified Question of Law	19
Type of Case Before Oklahoma Court of Criminal Appeals	
Appellate Jurisdiction – Appeal of District Court Decision	31
Certiorari Appeal – Appeal of Judgment Following Guilty or Nolo Contendere Appeal	0
Appeal by the State	1
Juvenile Appeal	0
Capital Appeal	0
Accelerated Docket Appeal	0
Appeal of Final Judgment Under Post Conviction Procedures Act	3

74. *Id.*

Original Jurisdiction	0
Other Appeals	0
Type of Case Before Oklahoma Court of Civil Appeals	
Appellate Jurisdiction	99
Petition for Certiorari	1
Review of Workers Compensation Court of Existing Claims ⁷⁵	6

C. Reasons Secondary Sources Are Cited in Oklahoma Appellate Opinions

Oklahoma appellate opinions were reviewed to determine the reason secondary sources were cited. Five reasons why a court would cite a secondary source were adapted from an earlier study of SCOTUS opinions by Professor Neil Bernstein.⁷⁶ Professor Bernstein divided the reasons secondary sources were cited into “support” and “discussion” categories.⁷⁷ Support categories are “the only ones in which the opinion writer used the secondary reference as authority for a particular statement.”⁷⁸ Support categories include “[s]upport of legal statements” where the citation is used as authority for a point of law, and “[s]upport of nonlegal fact statements” where authority is used to justify an assertion of fact.⁷⁹

Table 4 below shows how citations to secondary sources in Oklahoma appellate opinions are distributed among the five categories of reasons from the Bernstein study. Percentages of citations in each category are shown for each Oklahoma appellate court. The overall percentage of citations made by all three appellate courts in each category is tallied and can be compared with the overall percentage of citations made by SCOTUS in each category shown in the final column on the right.

75. The Court of Existing Claims was created by the Administrative Workers’ Compensation Act of 2013, OKLA. STAT. TIT. 85A, §400. The court was previously known as the Workers’ Compensation Court, <https://www.ok.gov/wcc/>.

76. Bernstein, *supra* note 3, at 69.

77. *Id.* at 70.

78. *Id.*

79. *Id.* at 69.

All three Oklahoma appellate courts (“Total” column) and SCOTUS cite secondary sources for roughly the same reasons in three out of the five categories. The courts diverge when citing secondary sources to indicate the location where data can be found. Twenty-two percent of secondary sources cited by the three Oklahoma appellate courts are cited to indicate the location of specific data. In contrast, only 8% of secondary source citations in SCOTUS opinions from the 1965 term were used to indicate the location of specific data.

This may be explained by the different amounts of trial and appellate court history that a case has once it reaches SCOTUS or an Oklahoma appellate court. Cases receiving a grant of certiorari by SCOTUS have routinely been litigated extensively in state or federal trial courts and intermediate appellate courts. Lower courts have already issued one or more judicial opinions. These lower court opinions are filled with citations to primary and secondary authority.

In contrast, most cases reach the Oklahoma appellate courts with a much less robust trial or appellate court history. Some cases advance to the appellate court directly from state trial courts where no judicial opinion is issued. Oklahoma appellate opinions support their reasoning and justify their holdings by citing primary and secondary sources. Citing sources in judicial opinions serves the additional function of legitimizing a court’s decision.⁸⁰ As one study of SCOTUS citations explained, “legitimacy may increase with a greater number of citations” and “[t]he greater the perceived legitimacy, the greater the likelihood of acceptance by others in the system.”⁸¹

80. Lawrence M. Friedman, Robert A. Kagan, Bliss Cartwright & Stanton Wheeler, *State Supreme Courts: A Century of Style and Citation*, 33 STAN. L. REV. 773, 793-94 (1981).

81. Charles A. Johnson, *Citations to Authority in Supreme Court Opinions*, 7 L. & POL’Y 509, 511 (1985).

TABLE 4
REASONS OKLAHOMA APPELLATE COURTS
CITED SECONDARY SOURCES, 1976, 1996, 2016 - 2020

<i>Reason for Citation</i>	<i>Oklahoma Supreme Court</i>	<i>Oklahoma Court of Civil Appeals</i>	<i>Oklahoma Court of Criminal Appeals</i> ⁸²	<i>Total OK Appellate Courts</i>	<i>Total SCOTUS 1965</i> ⁸³
Discussion	39%	24%	8%	32%	34%
Views and Quotes	17%	25%	42%	21%	21%
Location Where Data Can Be Found	16%	32%	25%	22%	8%
Support Legal Statements	24%	19%	24%	23%	19%
Support Nonlegal Factual Statements	4%	0%	1%	2%	13%

82. The percentages shown for the Court of Criminal Appeals may not be directly comparable with the other two Oklahoma appellate courts. COCA cited a small number of sources and issued a small number of opinions containing secondary source citations when compared with the other two Oklahoma appellate courts. For example, in the years examined in this study, the Oklahoma Supreme Court issued 207 opinions citing secondary sources with a total of 515 secondary sources cited, the Oklahoma Court of Civil Appeals issued 111 opinions citing secondary sources with a total of 232 secondary sources cited, but the Oklahoma Court of Criminal appeals only issued 44 opinions citing secondary sources with a total of 79 sources cited.

83. The Bernstein study included a catchall category of “other” reasons that SCOTUS cited a secondary source. Four percent of citations were to secondary sources for “other” reasons. This category was not used for the study of Oklahoma Appellate Courts.

D. Citing Secondary Sources as Support (Authority) for Legal and Non-Legal Statements

An example of the Oklahoma Court of Civil Appeals citing secondary sources in support of legal statements is provided by the opinion in *Beneficial Finance Co. of Norman v. Marshall*.⁸⁴ The case involved construction of Oklahoma's commercial code. The court cited treatises, law reviews, and other secondary sources for assistance in applying a term not defined in the commercial code. For example, the well-known treatise White and Summers's *Uniform Commercial Code* is cited in the opinion as authority for the defenses that an accommodation party may assert against other parties. Immediately after citing the treatise, the opinion explained:

The major question in this appeal is whether Garren was discharged under this section when the collateral for the loan was sold by the principal debtor with the express authority of the creditor. In order to resolve this question it is first necessary to consider the meaning of "impairment of collateral" as used in Section 3-606.⁸⁵

The court expressed frustration that "Section 3-606 d[id] little to aid this inquiry because it d[id] not define 'impairment of collateral.'"⁸⁶ To resolve the question, the court turned to additional authority including the Official Code Comment, case law from other jurisdictions, the *Restatement of Security, American Jurisprudence, Corpus Juris Secundum*, and a law review article.⁸⁷

The opinion in *In re Initiative Petition No. 363, State Question No. 672* provides an example of the Oklahoma Supreme Court using a secondary source as authority for a non-legal factual statement.⁸⁸ In this protest to an initiative petition the Court considered a number of challenges to a state question legalizing casino gambling. Proponents challenged the use of the term "gambling" in the ballot title and argued the

84. *Beneficial Fin. Co. of Norman v. Marshall*, 1976 OK CIV APP 10, 551 P.2d 315, 317.

85. *Id.*

86. *Id.*

87. *Id.* at 317-19.

88. *In re Initiative Petition No. 363, State Question No. 672*, 1996 OK 122, 927 P.2d 558, 570.

term “gaming” should have been used instead.⁸⁹ The opinion noted that the Court interprets “fundamental-law provisions . . . in conformity with their ordinary significance in the English language.”⁹⁰ The Court cited secondary sources for definitions and ultimately concluded that both terms were synonymous with “games of hazard or skills.”⁹¹ Sources cited include the *Oxford English Dictionary*, *Oxford Dictionary of English Etymology*, *A Dictionary of American English*, and the *Shorter Oxford English Dictionary*.⁹² The Court refused to conclude that the “use of ‘gambling’ instead of ‘gaming’ (in the text prepared for the ballot title) was clearly contrary to the command of statutory law.”⁹³

The use of secondary sources as authority to support nonlegal factual statements can, in the words of Professor Bernstein, be “controversial.”⁹⁴ A court’s use of secondary sources in this context becomes worrisome if judicial notice is taken of facts that “were not part of the evidence formally introduced into the trial court record.”⁹⁵ Renowned administrative law expert Professor Kenneth Culp Davis devised a test to determine when parties should receive advance notice of and an opportunity to challenge a court taking judicial notice of particular facts. The factors include “how far the facts are from the center of the controversy between the parties, the extent to which the facts are adjudicative facts about the parties or legislative facts of a general character, and the degree of certainty or doubt about the facts.”⁹⁶

Professor Bernstein’s review of SCOTUS opinions from the 1965 term did not reveal any opinion in which the Court took improper judicial notice of facts through the use of secondary sources. Similarly, no Oklahoma appellate court opinion examined in this study used a secondary source to improperly take judicial notice of a fact.⁹⁷

89. *Id.*

90. *Id.* (emphasis omitted).

91. *Id.*

92. *Id.* at 570 nn.51-52.

93. *Id.* at 570-71.

94. Bernstein, *supra* note 3, at 70.

95. *Id.* at 71.

96. *Id.* at 71-72 (quoting Kenneth Culp Davis, *Judicial Notice*, 55 COLUM. L. REV. 945, 983 (1955)).

97. For a discussion of Oklahoma appellate courts taking judicial notice of adjudicative facts from secondary sources, see *Beason v. I. E. Miller Servs., Inc.*, 2019 OK 28, 441 P.3d 1107, 1138 n.115 (Edmondson, J., dissenting) (citing *Reeves v. Agee*, 1989 OK 25, 769 P.2d 745, 753 (An appellate court cannot take judicial notice of material which, though properly available for notice by the trial court, has not been incorporated into the record on

1. Secondary Sources Cited as Support (Authority) in Dissenting Opinions

The citation of secondary sources as authority in dissenting opinions raises interesting questions. The author of a dissenting (or concurring) opinion is on the losing end of the court's decision. Perhaps a Justice's writing style changes when penning a dissenting opinion. SCOTUS Associate Justice Elena Kagan admitted to writing more formally when authoring a majority opinion than when writing a dissenting opinion.⁹⁸ One scholar of judicial opinion writing noted that dissenting "judges may be less constrained by traditional legal reasoning."⁹⁹ Another scholar posited "it could be argued that secondary source references appear in majority opinions as a guide to the further education of the public and in dissenting opinions more as a guide to the further education of brother Justices."¹⁰⁰

The 1965 study of SCOTUS opinions noted an interesting phenomenon of the Court using secondary sources as authority in dissenting opinions more frequently than in majority opinions.¹⁰¹ The author classified the use of a secondary source as authoritative when it is cited in support of legal or non-legal factual statements.¹⁰² The study found that 35% of citations to secondary sources were used as authority in dissents.¹⁰³ The number of dissenting opinions issued by SCOTUS has likely increased since 1965. A 1981 study reported "[o]nly about a quarter of the Court's reported opinions are unanimous"¹⁰⁴ and a study published in 2020 noted "the U.S. Supreme Court had more dissenting opinions than majority opinions, and less than a quarter of its 2015-term opinions were

appeal)). An examination of Oklahoma appellate courts taking judicial notice of adjudicative facts found in traditional and online sources is provided in Lee F. Peoples, *Is the Internet Rotting Oklahoma Law?*, 52 TULSA L. REV. 1, 8-11 (2016).

98. Cooney, *supra* note 59, at 28-29 (citing Interview by Bryan A. Garner with Elena Kagan, Assoc. Justice, U.S. Supreme Court, in D.C. (July 16, 2015)).

99. *Id.* at 29 n.74 (quoting Margolis, *supra* note 6, at 940).

100. Bernstein, *supra* note 3, at 70.

101. *Id.*

102. *Id.* See also methodology discussion *supra* Section III.

103. Bernstein, *supra* note 3, at 69, see Table XIV (reporting 19% of citations to secondary sources in dissenting opinions for "support of legal statements" and 16% of citations to secondary sources in dissenting opinions for "support of nonlegal fact statements").

104. Friedman, et. al., *supra* note 80, at 786.

unanimous.”¹⁰⁵ The trend of SCOTUS dissenting opinions citing secondary sources has similarly continued. A study examining the Court’s 2015 term reported “[d]issenting Justices cited secondary sources 143 times (7% of dissent citations), meaning that dissenters cited secondary sources at a 2% higher rate than Justices writing for the majority and a 3% higher rate than Justices writing for a unanimous Court.”¹⁰⁶

Some Oklahoma appellate dissents include citations to secondary sources as authority (cited in support of legal or non-legal factual statements). However, Oklahoma courts cite secondary sources as authority in dissents at a lower rate than SCOTUS did in 1965. A review of all Oklahoma Supreme Court opinions from the seven years examined in this study revealed a total of thirty-six citations to secondary sources as authority in dissents.¹⁰⁷ These thirty-six citations account for 7% of all citations to secondary sources in Oklahoma Supreme Court opinions.¹⁰⁸

E. Citing Secondary Sources for Discussion, Views and Quotes, and Location

The remaining three reasons that an Oklahoma appellate court may cite a secondary source fall into what Professor Bernstein’s study termed “discussion.”¹⁰⁹ Discussion categories include “discussions of points and policy” where an opinion:

contains assertions supported by case citations or reasoning alone, followed by a reference to a secondary source that presumably examines the matter extensively. In addition, this category includes citations to books or articles which discuss a question that the citing Justice raised but explicitly refused to resolve in any way.¹¹⁰

105. Cooney, *supra* note 59, at 9.

106. *Id.* at 29. Dissenting opinions are not written in SCOTUS case. The author controlled for this factor by reporting the percentages of citations in dissenting opinions as a percentage of all citations in the dissenting opinion.

107. The following numbers of citations to secondary sources as authority in Oklahoma Supreme Court dissenting opinions were recorded: 1976, 5 citations; 2016, 7 citations; 2017, 7 citations; 2019, 15 citations; 2020, 2 citations. Zero citations of secondary sources as authority were found in dissenting opinions in 1996 and 2018.

108. 36 citations / 515 total citations to secondary sources in all Oklahoma Supreme Court opinions examined in this study = 0.069.

109. Bernstein, *supra* note 3, at 71.

110. *Id.*

Citations categorized as “[v]iews and quotes’ contain[] those references which were made to show the position of an identified person or persons, and not to put forth the particular position as accurate or approved.”¹¹¹ Finally, “location” citations are those indicating “where certain data can be found, without any indication that the reference is completely truthful or conclusions as to the significance of the data.”¹¹²

Examples of Oklahoma appellate courts using secondary authority for all three discussion categories are found in the Oklahoma Court of Civil Appeals opinion in *City of Tulsa v. Mingo School District No. 16*.¹¹³ The opinion examined issues of eminent domain. The category of “discussions of points and policy” is exemplified by the statement in the opinion, “The majority of courts which have considered the question have embraced this rationale and have upheld judgments for severance damages where the jury considered the effect of increased traffic noise in arriving at the amount of damages.”¹¹⁴ This statement is followed by citations to a treatise, an A.L.R. annotation, and a law review article titled *Noise Pollution: An Introduction to The Problem and an Outline for Future Legal Research*.¹¹⁵ The law review citation is preceded by the *see generally* signal. This signal indicates that “cited authority presents helpful background material related to the proposition.”¹¹⁶ The use of this signal and the secondary sources cited are an example of an Oklahoma appellate court using secondary authority for discussion of points and policy.

The opinion provides an example of using secondary sources as “views and quotes” to demonstrate a position without approving of the position. When discussing how to value the property at issue, the opinion cited to a Kansas Supreme Court opinion for the proposition that it is difficult to value property rarely sold on the open market.¹¹⁷ Immediately

111. Bernstein, *supra* note 3, at 70.

112. *Id.*

113. *City of Tulsa v. Mingo Sch. Dist. No. 16*, 1976 OK CIV APP 27, 559 P.2d 487, 492.

114. *Id.*

115. *Id.* (citing Robert Brazener, Annotation, *Traffic Noise and Vibration from Highway as Element of Damages in Eminent Domain*, 51 A.L.R.3d 860; 4A NICHOLS ON EMINENT DOMAIN § 14.2462 (Rev. 3d ed. 1975). See generally Hildebrand, *Noise Pollution: An Introduction To The Problem and an Outline For Future Legal Research*, 70 COLUM. L. REV. 652 (1970)).

116. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION R. 1.2(d), at 64. (Columbia L. Rev. Ass’n et al. eds, 21st ed. 2020).

117. *Mingo Sch. Dist. No. 16*, 559 P.2d at 493 (quoting *City of Wichita v. Unified*

following that case citation, the opinion cited a treatise and a law review article preceded by the *see also* signal.¹¹⁸ This signal tells the opinion reader that the cited authority supports “a proposition when authorities that state or directly support the proposition already have been cited or discussed.”¹¹⁹ In this example, the Kansas case has already discussed the proposition and the secondary sources merely provide additional discussion as “views and quotes” sources.

The final discussion category of “location” is demonstrated by the opinion’s reference to a law review article when discussing market value. Before citing the law review article, the opinion cited two SCOTUS opinions and a Tenth Circuit Court of Appeals opinion in support of the court’s approach to market value.¹²⁰ These sources of primary controlling authority are more than sufficient to support the court’s position. The citation to the law review article is intended to identify the location of a source providing additional information.

F. Level of Influence

Each secondary source cited by an Oklahoma appellate court was analyzed to determine what level of influence the citation had on the court’s opinion. The method for determining the amount of influence a source had was adapted from a study conducted by Richard Kopf and published in the *Nebraska Law Review* in 1997.¹²¹ The study looked only at the influence of the *Nebraska Law Review* on the Nebraska Supreme Court. However, the categories of influence articulated by Kopf are easily adaptable to measure the influence of all types of secondary sources on appellate courts.

The three levels of influence a law review article may have on a judicial opinion writer are as follows:

School Sch. Dist. No. 259, 201 Kan. 110, 439 P.2d 162, 166).

118. *Id.* at 493 (citing 4A NICHOLS ON EMINENT DOMAIN § 12.32 (Rev. 3d ed. 1975); Edward E. Level, *Evaluation of Special Purpose Properties in Condemnation Proceedings*, 3 URB. L. 428 (1971)).

119. THE BLUEBOOK, *supra* note 115, R. 1.2(a), at 62.

120. *Mingo Sch. Dist. No. 16*, 559 P.2d at 494 (citing *United States v. Fuller*, 409 U.S. 488 (1973); *United States v. Miller*, 317 U.S. 369 (1943); *United States v. Cors*, 337 U.S. 325, 332 (1949); and, *J. A. Tobin Const. Co. v. United States*, 343 F.2d 422 (10th Cir.)).

121. Kopf, *supra* note 57, at 719–20.

First, we determined if the article was discussed (or quoted) by the author of the opinion. If the article was merely cited but not discussed (or quoted), the article was considered to have had only a small influence on the writer (“minimal influence”). Second, if the article was discussed (or quoted) by the author rather than merely cited, it was considered to have had a midrange influence on the writer of the opinion (“moderate influence”). Third, if the article was discussed (or quoted), and the author of the opinion appeared to adopt or follow the reasoning of the article when resolving the issue for which the article was cited, the article was listed as having a major influence on the writer (“significant influence”).¹²²

Table 5 below shows the percentage citations to sources having either minimal, moderate, or significant influence on the opinions of each Oklahoma appellate court.

122. *Id.* at 720. Kopf provided two clarifications for the categories of moderate and significant influence: “Example One: We treated a law review article that was discussed but not followed as having moderate influence on the opinion writer. Some would argue that the article had no influence because the writer did not follow the article. The Author of this Article, however, chose to treat the decision of an opinion writer to discuss, but not follow, the premise of an article as having ‘moderate influence.’ This was done on the assumption that if the opinion writer felt obligated to discuss the article, its significance to the writer was more than that of another article that warranted only a perfunctory citation without discussion.” And “Example Two: On the ‘significant influence’ scale, we treated a law review article as having significant influence even if the article was cited in support of a point that was not case dispositive. Thus, if a law review article was cited, discussed, and followed on a minor issue, we treated the article as having significantly influenced the opinion writer. We chose to treat such influence as ‘significant’ on the assumption that the opinion writer would not have explicitly resolved even a minor issue in his opinion unless the issue was necessary to a fair disposition of the matter.”

TABLE 5
INFLUENCE OF SECONDARY SOURCES ON
OKLAHOMA APPELLATE OPINIONS, 1976, 1996, 2016 – 2020

<i>Level of Influence</i>	<i>Oklahoma Supreme Court</i>	<i>Oklahoma Court of Civil Appeals</i>	<i>Oklahoma Court of Criminal Appeals</i> ¹²³	<i>Total OK Appellate Courts Combined</i>
Minimal Influence	76%	66%	72%	73%
Moderate Influence	22%	32%	28%	25%
Significant Influence	0.02%	0.02%	0%	0.01%

Secondary sources had mostly minimal influence on Oklahoma appellate opinions. As indicated in Table 5, 73% of citations to secondary sources in Oklahoma appellate opinions had only minimal influence in the opinions. The Oklahoma Supreme Court's opinion in *Nichols v. Mid-Continent Pipe Line Co.*, provides an example of a citation to a minimally influential secondary source.¹²⁴ In this case the Court considered a statutory claim of nuisance for injury to cattle caused by oil and pipeline companies. The opinion provided a definition of nuisance in the context of real property and cited to several sections of the *Restatement of Torts*, *Prosser and Keeton on the Law of Torts*, and *Salmond on the Law of Torts*.¹²⁵ The opinion did not discuss or quote these sources. These citations had minimal or no influence on the Court's opinion but may be helpful to researchers who want to explore nuisance in more detail.

123. The percentages shown for the Court of Criminal Appeals may not be directly comparable with the other two Oklahoma appellate courts. COCA cited a small number of sources and issued a small number of opinions containing secondary source citations when compared with the other two Oklahoma appellate courts. For example, in the years examined in this study the Oklahoma Supreme Court issued 207 opinions citing secondary sources with a total of 515 secondary sources cited, the Oklahoma Court of Civil Appeals issued 111 opinions citing secondary sources with a total of 232 secondary sources cited, but the Oklahoma Court of Criminal appeals only issued 44 opinions citing secondary sources with a total of 79 sources cited.

124. *Nichols v. Mid-Continent Pipe Line Co.*, 1996 OK 118, 933 P.2d 272, 276.

125. *Id.*

Twenty-five percent of citations to secondary sources in Oklahoma appellate opinions had moderate influence on the opinions. An example of a secondary source citation categorized as having moderate influence is found in *Kent v. City of Oklahoma City*.¹²⁶ In this appeal of a district court decision in favor of the City of Oklahoma City, the Court of Civil Appeals considered attempts by landowners to invalidate a zoning decision. Landowners argued against the proposed zoning based on the classification of their land in the City's "[c]omprehensive Master Plan, known as 'PlanOKC.'"¹²⁷ The opinion included a footnote explaining PlanOKC, described the plan's creation, and quoted the following from the plan: "PlanOKC is the manifestation of a common vision developed through years of analysis and input from Oklahoma City residents, business professionals, community stakeholders and local government officials."¹²⁸ PlanOKC is mentioned throughout the court's opinion. PlanOKC did not have significant influence in the opinion. The legal issues in the case centered around state law and municipal ordinances concerning the enactment and application of ordinances.¹²⁹ The Court of Civil Appeals relied on those sources of primary authority in affirming the district court's decision.

Very few Oklahoma appellate opinions were significantly influenced by secondary sources. Secondary sources were significantly influential in Oklahoma appellate opinions only fourteen times (0.02%) during the years examined in this study. The vast majority of secondary source citations had only moderate or minimal influence on Oklahoma appellate opinions.

A 1996 Oklahoma Court of Civil Appeals opinion provides an example of a secondary source having significant influence on the court. In *Bennett v. McKibben*, the court held that statements in pleadings that allegedly slandered title to real property were absolutely privileged and could not be the basis for claims of slander of title.¹³⁰ In reaching this holding, the court cited and discussed cases previously decided by the Oklahoma Supreme Court, an Oklahoma statute, and significant sections of the *Restatement of the Law (Second) of Torts*.¹³¹ The opinion quoted language from the Restatement to specifically rebut the argument made by

126. *Kent v. City of Okla. City*, 2020 OK CIV APP 21, ¶ 22, 467 P.3d 726, 732.

127. *Id.* at ¶ 4, 467 P.3d at 728.

128. *Id.* at ¶ 4, 467 P.3d at 729.

129. *Id.* (discussing whether the trial court correctly denied a writ of mandamus and motions to consolidate and intervene and the landowner's rights under state law).

130. *Bennett v. McKibben*, 1996 OK CIV APP 22, ¶¶ 8-15, 915 P.2d 400, 404-05.

131. *Id.* ¶¶ 8-14, 915 P.2d at 404.

the appellant that the absolute privilege “only applie[d] to personal defamation actions, not disparagement of title actions.”¹³² After extensively quoting from the Restatement the opinion noted, “Thus, according to the Restatement, the absolute privilege provided to attorneys and parties in Sections 586 and 587 apply to slander of title actions.”¹³³ The court’s use of and statement about the Restatement was consistent with its function of clarifying Oklahoma law.

132. *Id.* ¶ 11, 915 P.2d at 404.

133. *Id.* ¶ 15, 915 P.2d at 404.

IV. TYPE OF AUTHORITY CITED

TABLE 6
CITATIONS TO TYPES OF SECONDARY SOURCES
BY OKLAHOMA APPELLATE COURTS

Year	Law Reviews	Treatises	Restatements	Legal Encyclopedias	Other Non-Legal Secondary Sources	A.L.R.	Legal Dictionary	Non-Law Dictionary	Other Legal Secondary Sources
1976	47	38	10	54	4	51	1	3	6
1996	43	38	31	5	8	13	2	8	9
2016	32	10	6	1	11	0	7	8	11
2017	17	19	10	11	3	4	16	6	1
2018	12	21	12	5	24	2	9	6	5
2019	18	14	12	2	5	1	13	10	7
2020	13	16	10	10	29	3	6	5	5
TOTAL	182	156	91	88	84	74	54	46	44
Citations As % of All Secondary Sources Cited	22%	19%	11%	11%	10%	9%	7%	6%	5%

A. *The Use of Law Reviews Generally*

Articles appearing in law reviews “are often written with legislators, judges, and other legal officials in mind.”¹³⁴ Courts may find the articles helpful because of their “in-depth analysis of a specific legal issue” with extensive references to sources, summary of the current state of the law, discussion of public policy implications, and suggestions for changes to the law.¹³⁵ Law review articles have been criticized on various grounds. An early critique faulted law reviews for containing “a pennyworth of content . . . beneath a pound of so-called style.”¹³⁶ Perhaps the most famous recent criticism of law reviews was made by SCOTUS Chief Justice John

134. FOX, *supra* note 15, at 48.

135. *Id.*

136. Michael Whiteman, *Appellate Jurisprudence in the Internet Age*, 14 NW. J. TECH & INTELL. PROP. 255, 269 (2017) (citing Fred Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38 (1936)).

Roberts when he complained of reviews publishing articles about “the influence of Immanuel Kant on evidentiary approaches in 18th-century Bulgaria, or something.”¹³⁷

Some courts cite law review articles more frequently in their opinions when focusing “on new issues”¹³⁸ or when changing the law of their jurisdiction.¹³⁹ Several examples of this use of law review articles are found in Oklahoma appellate opinions.¹⁴⁰ An Oklahoma Supreme Court opinion cited five law review articles when deciding an issue of first impression in *Globe Life & Accident Insurance Co. v. Oklahoma Tax Commission*.¹⁴¹ The Court considered whether computer magnetic tapes were intangible personal property and therefore not subject to a state use-tax levy. The opinion noted that this issue “ha[d] perplexed both state and federal courts for several decades now” and that the computer tapes “possess the legal qualities of both tangible and intangible personal property.”¹⁴² The Court found no applicable guidance from the state tax code and turned to the common law for guidance. The Court’s opinion cited and quoted from five law review articles, a treatise, and one of its previous opinions for a relevant definition of tangible personal property.¹⁴³ The Court ultimately concluded the tapes were intangible personal property.

137. *Id.* at 270 (citing Harry T. Edwards, *Another Look at Professor Rodell’s Goodbye to Law Reviews*, 100 VA. L. REV. 1483, 1488 (2014)).

138. Friedman, et. al., *supra* note 80, at 815. For an example of an Oklahoma appellate court utilizing a law review when dealing with a new issue *see* *Indep. Sch. Dist. No. 8 of Seiling, Dewey Cty. v. Swanson*, 1976 OK 71, 553 P.2d 496, (noting where the court’s 1976 opinion on the ability of a school district to regulate the length of boys’ hair. The opinion notes “we are greatly persuaded by a leading writer in the area that: ‘. . . a preoccupation with constitutional issues has distorted both the constitutional and non-constitutional questions involved. For example, the issue of the power of the school board to prohibit extreme hair and dress styles often has been joined as freedom of expression versus state power, distorting both the first amendment and the legislative delegation of power to school boards . . .’ Goldstein, *The Scope and Sources of School Board Authority to Regulate Student Conduct and Status; A non-constitutional Analysis*, 117 U. PA. L. REV. 373, 377 (1969).”

139. Friedman, et. al., *supra* note 80, at 815.

140. *See* *Foglesong v. Thurston Nat. Life Ins. Co.*, 1976 OK 93, 555 P.2d 606, 610 (citing several law review articles along with other primary authority when adopting a method for determining the fair value of shares of stock).

141. *Globe Life & Acc. Ins. Co. v. Oklahoma Tax Comm’n*, 1996 OK 39, 913 P.2d 1322.

142. *Id.* ¶ 14, 913 P.2d at 1328.

143. *Id.* ¶ 9 nn.19-20, 913 P.2d. at 1326 nn.19-20.

A second example of the Oklahoma Supreme Court turning to law review articles for information is found in an opinion adopting the doctrine of reasonable expectations to the construction of insurance contracts. In *Max True Plastering Co. v. U.S. Fidelity & Guaranty Co.* the Oklahoma Supreme Court “join[ed] the majority of jurisdictions” by recognizing the reasonable expectations doctrine “as [a] part of Oklahoma law.”¹⁴⁴ When discussing the doctrine, the opinion cited cases from other jurisdictions adopting the doctrine and five law review articles discussing aspects of the rule.¹⁴⁵

1. Frequency of Law Review Citations in Oklahoma Appellate Opinions

The opinions of Oklahoma’s appellate courts cite to law reviews more frequently than any other type of secondary source. As depicted above in Table 6, 182 of the 820 total citations to secondary sources during the years examined in this study are to law review articles. Twenty-two percent of citations to secondary sources in Oklahoma appellate opinions are to law reviews. Many other appellate courts frequently cite law reviews in their opinions. Oklahoma appellate courts’ high rate of citation to law reviews is similar to studies of the state supreme courts of Kansas¹⁴⁶ and California¹⁴⁷ where law reviews were the most frequently cited secondary source in those states’ high court opinions. However, studies of appellate court opinions from Arkansas,¹⁴⁸ Virginia,¹⁴⁹ Wisconsin,¹⁵⁰ and Montana¹⁵¹ reveal that opinions from these courts cite other secondary sources at a higher rate than law reviews.

144. *Max True Plastering Co. v. U.S. Fid. & Guar. Co.*, 1996 OK 28, ¶ 6, 912 P.2d 861, 863–64.

145. *Id.* ¶¶ 7–8, 912 P.2d at 864–65 nn.10, 11, 26.

146. *Custer*, *supra* note 66, at Table 9 (finding that in 1995 the Kansas Supreme Court cited law reviews more than any other secondary source at a rate of 31.8%); *Leonard*, *supra* note 60, at 146 (reporting that in 1990 the Ohio Supreme Court cited nine law review articles while the Ohio Courts of Appeals only cited five law review articles).

147. *Whiteman*, *supra* note 136, at 268–269 (noting that compared to other sources, the law review is at the top of the secondary sources).

148. *Beaird*, *supra* note 64, at 320.

149. *Cooney*, *supra* note 59, at 26 (stating that treatises were the most popular secondary source cited by the Virginia and Wisconsin appellate courts)

150. *Id.*

151. *Snyder*, *supra* note 7, at 469, 470 (revealing that legal encyclopedias were the most frequently cited source by the Montana Supreme Court).

The Oklahoma appellate courts' rate of citation to law reviews has fallen in recent years. Citations to law reviews were the highest in 1976 with forty-seven citations, falling to a low of twelve citations in 2018. This decline is consistent with a widely reported trend of decreasing citations to law reviews by appellate courts. A longitudinal study examining state and federal judicial opinions citing academic legal periodicals from 1945 through 2018 describes a peak in citations to law reviews in 1975 followed by a "slow and steady decline."¹⁵² Factors contributing to the decline in citation to law reviews include advancements in technology making it easier for judges to locate primary authority, increases in workload leaving less time for judges to find and cite law review articles, and a shift in focus among law reviews to issues that are not relevant to appellate courts.¹⁵³ Studies of SCOTUS,¹⁵⁴ the United States Courts of Appeals,¹⁵⁵ and state appellate courts from California,¹⁵⁶ Arkansas,¹⁵⁷ and New York¹⁵⁸ confirm a general decline in the citation of law reviews in state appellate court opinions.

2. Differences Between the Oklahoma Appellate Courts in The Citation of Law Reviews

Oklahoma's three appellate courts differ in how often they cite law review articles. The highest number of citations to law review articles was found in the opinions of the Oklahoma Supreme Court. The Court's opinions cited 136 law review articles during the years examined in this study. In contrast, the Court of Civil Appeals cited forty-two law review articles and the Court of Criminal Appeals cited only four articles.¹⁵⁹ The Oklahoma appellate courts' rates of law review article citation are similar to other state appellate courts. Studies of the appellate courts in Kansas,

152. Brian T. Detweiler, *May It Please the Court: A Longitudinal Study of Judicial Citation to Academic Legal Periodicals*, 39 LEGAL REF. SERV.'S Q. 87, 93 (2020).

153. *Id.*

154. Whiteman, *supra* note 136, at 270.

155. Louis J. Sirico, Jr. & Beth A. Drew, *The Citing of Law Reviews by the United States Court of Appeals: An Empirical Analysis*, 45 U. MIAMI L. REV. 1051 (1991).

156. Whiteman, *supra* note 136, at 262.

157. Beaird, *supra* note 64, at 323-324.

158. Manz, *supra* note 62, at 1285-86.

159. Interestingly, the Oklahoma Court of Criminal Appeals cited more law review articles in one 1964 opinion than it did in the entire seven years examined in this study. The court's opinion in *Booth v. State*, 1964 OK CR 124, 398 P.2d 863, cited nine law review articles.

Ohio, and Arkansas reveal that each state's supreme court cites law review articles more frequently than the intermediate appellate court.¹⁶⁰

There are several possible explanations for the varying rates of law review citation among Oklahoma's appellate courts. Two studies examining appellate courts concluded that a court's workload impacts its citation of law review articles.¹⁶¹ Both studies found that the heavier a court's workload, the less likely the court is to cite law review articles. This finding may explain the lower rate of citations to law review articles in opinions of the Oklahoma Court of Civil Appeals. Appellate workload statistics for the Oklahoma Supreme Court and Oklahoma Court of Civil Appeals are reported in the *Oklahoma Appellate Practice* treatise for the years 2004–2008.¹⁶² During these years, the number of opinions issued by the Oklahoma Court of Civil Appeals ranged from fifteen to twenty-six times greater than the number of opinions issued by the Oklahoma Supreme Court.¹⁶³ The higher workload of the judges of the Oklahoma Court of Civil Appeals could be one reason why fewer citations to law review articles appear in their opinions.

The role each Oklahoma appellate court plays in resolving issues of public policy may help explain why the courts cite law review articles more or less frequently. A study of law review citations speculated that SCOTUS opinions may cite law review articles more frequently than the federal circuit courts because SCOTUS “consciously makes policy” and policy-oriented articles may be more appropriate to include in SCOTUS

160. Custer, *supra* note 66, at 129 (reporting that in 1995, 31.8% of the secondary sources cited by the Kansas Supreme Court were law review articles compared with the Kansas Court of Appeals citing law review articles at a rate of only 9%); Leonard, *supra* note 60, at 145 (reporting that in 1990 the Ohio Supreme Court cited nine law review articles while the Ohio Courts of Appeals only cited five law review articles); Beaird, *supra* note 64, at Table 18 (finding that in the years 2000, 1990, and 1980 the Arkansas Supreme Court cited forty-four law review articles while the Arkansas Court of Appeals cited only thirty-seven articles during the same years).

161. Sirico & Drew, *supra* note 155, at 1053; David L. Schwartz & Lee Petherbridge, *The Use of Legal Scholarship by the Federal Courts of Appeals: An Empirical Study*, 96 CORNELL L. REV. 1345, 1366 (2011).

162. ELLIS, JR. & MUCHMORE, *supra* note 10, § 1:60.

163. The Oklahoma Supreme Court issued the following number of opinions: 2004, 51; 2005, 40; 2006, 39; 2007, 55; 2008, 49. The Oklahoma Court of Civil Appeals issued the following number of opinions: 2004, 872; 2005, 810; 2006, 1,028; 2007, 862; 2008, 822. Although the years reported by Ellis & Muchmore do not exactly correspond with the years examined in this study the workload statistics should approximate the workload of the appellate courts during the years covered by this study. *See also supra* note 160.

opinions.¹⁶⁴ In contrast, the federal circuit courts “may see their function as not making policy, but as deciding specific disputes” and circuit judges may shy away from citing “policy-oriented articles or even articles with themes more general than the precise dispute at bar.”¹⁶⁵

Oklahoma appellate court rules and practices give some insight into which courts are more likely to be involved in public policy issues. Supreme Court Rule 1.24 provides that every appeal is assigned to the Court of Civil Appeals unless an appeal is retained by the Supreme Court.¹⁶⁶ One factor considered by the Supreme Court in deciding to retain a case is whether “[t]he issues raised on appeal concern matters which will affect public policy and any decision is likely to have widespread impact.”¹⁶⁷ The *Oklahoma Appellate Practice* treatise explains that the Supreme Court “does not often elaborate on why it is retaining an appeal, but the facts of the case generally reflect that the matter is one of public importance.”¹⁶⁸ A final example of the Oklahoma Supreme Court’s orientation toward public policy issues is the public interest exception. Under this exception, the Oklahoma Supreme Court departs from its normal practice of not considering an issue on appeal not included in the petition or raised at the trial court if the issue involves public policy.¹⁶⁹

The rules and practices of the Oklahoma Supreme Court make it more likely to consider cases involving public policy. The Court may find policy-oriented law review articles more helpful in deciding cases involving public policy. This may explain why the Oklahoma Supreme Court cited law reviews at a higher rate than the state’s other appellate courts and is consistent with the findings of other citation studies.¹⁷⁰

164. Sirico & Drew, *supra* note 155, at 1053.

165. *Id.*

166. 12 Okla. Stat. tit. App. 1 § 1.24 (a) (2011). *See also* Ellis, JR. & Muchmore, *supra* note 10, § 10:1.

167. 12 Okla. Stat. tit. App. 1 § 1.24 (c)(3) (2011). *See also* Ellis, JR. & Muchmore, *supra* note 10, § 10:2.

168. ELLIS, JR. & MUCHMORE, *supra* note 10, § 10:2.

169. *Id.* § 15:32 (citing *Beville v. Curry*, 2001 OK 1, ¶ 11, 39 P.3d 754). *See also In re Initiative Petition No. 397*, State Question No. 767, 2014 OK 23, ¶ 25, 326 P.3d 496, 507.

170. Friedman et al., *supra* note 80, at 815 (noting that law review citation rates may be a rough index of a court’s orientation toward an overt policy-making role). *See also* Sirico & Drew, *supra* note 155, at 1052-53.

3. Recency of Law Review Articles Cited

Opinions of all three Oklahoma appellate courts cited law review articles published an average of fourteen years prior to the date of the opinion citing the article. There was some variation between the courts, with articles appearing in Oklahoma Supreme Court opinions averaging twenty-one years old, articles appearing in Oklahoma Court of Civil Appeals opinions averaging thirteen years old, and articles appearing in the Oklahoma Court of Criminal Appeals averaging just seven years old.

The age of articles cited by the Oklahoma appellate courts is average when compared with studies of other appellate courts. A study of the United States Courts of Appeals found that 71% of citations to articles were to articles published within eleven years of the date of the citing opinion.¹⁷¹ The majority of articles cited by the Kansas appellate courts were published within fifteen years of the citing opinion.¹⁷² Eighty-one and four-tenths (81.4) percent of articles cited by the Kansas Supreme Court and 74.3% of articles cited by the Kansas Court of Appeals were published within fifteen years of the citing opinion.¹⁷³ Appellate jurists most likely find articles written relatively recently to be the most relevant. More recent articles typically consider “the most recent statutes, cases and modes of analysis. Therefore, judges may perceive that these articles offer superior support for legal conclusions.”¹⁷⁴

4. The Most Cited Law Reviews

The Oklahoma appellate courts most frequently cite articles appearing in the Oklahoma Law Review, a journal published by the University of Oklahoma College of Law.¹⁷⁵ State appellate courts commonly cite law

171. Sirico & Drew, *supra* note 153, at 1055-56.

172. Custer, *supra* note 65, at 130.

173. *Id.*

174. Sirico & Drew, *supra* note 155, at 1056.

175. Oklahoma’s three law schools currently publish six journals. The University of Oklahoma College of Law publishes the Oklahoma Law Review, American Indian Law Review, and One J: Oil and Gas, Natural Resources, and Energy Journal. *Journals*, THE UNIVERSITY OF OKLAHOMA COLLEGE OF LAW, <https://law.ou.edu/faculty-and-scholarship/journals> (last visited Sept. 17, 2021). The University of Tulsa College of Law publishes the Tulsa Law Review and the Energy Law Journal. *Law Journals*, UNIVERSITY OF TULSA COLLEGE OF LAW, <https://law.utulsa.edu/law-journals/> (last visited Sept. 17, 2021). Oklahoma City University School of Law publishes the Oklahoma City University Law Review. *Law Review*, OKLAHOMA CITY UNIVERSITY SCHOOL OF LAW,

journals published by their state's law schools. Studies of appellate opinions in Kansas and Arkansas found that their state appellate courts most frequently cite articles published by law schools located in their respective states.¹⁷⁶

TABLE 7
MOST CITED LAW REVIEWS BY OKLAHOMA APPELLATE COURTS

<i>Rank</i>	<i>Journal</i>	<i>Total Citations</i>
1	Oklahoma Law Review	17
2	Harvard Law Review	11
3 (tie)	Stanford Law Review Yale Law Journal	5
4 (tie)	Columbia Law Review Law Quarterly Review Washington & Lee Law Review	4
5 (tie)	California Law Review (Berkeley) Cincinnati Law Review Computer Law Journal New Mexico Law Review Texas Law Review	3

Historically, law reviews published by elite law schools were more frequently cited in appellate judicial opinions than reviews published by lower ranked schools. The heavy citation of journals published by elite law schools in judicial opinions has been documented in numerous studies.¹⁷⁷ Elite law schools are generally defined as those ranking in the top fourteen (T14) spots in the U.S. News and World Report's Best Law School Rankings.¹⁷⁸ The elite journals' high citation rates have been slipping for

<https://law.okcu.edu/academics/experiential-learning/law-review/> (last visited Sept. 17, 2021). The Tulsa Law Review was cited twice by Oklahoma appellate opinions during the years examined in this study. No other journals published by Oklahoma law schools were cited.

176. Custer, *supra* note 66, at 130; Beard, *supra* note 64, at 324.

177. Manz, *supra* note 62, at 1284; Kopf, *supra* note 57, at 715; Sirico & Drew, *supra* note 155, at 1054-55.

178. The 2022 T14 law schools in order are: Yale, Stanford, Harvard, Columbia, Chicago, NYU, Penn, Virginia, California Berkeley, Duke, Michigan, Northwestern,

the past several decades. A study of the citation practices of SCOTUS found a decline in citations to elite journals from 1971 to 1999.¹⁷⁹ The most recently published study of law journal citation described the elite journals as having “an eroding but persistent citation advantage.”¹⁸⁰

The most cited law reviews after the *Oklahoma Law Review* are journals published by the elite law schools ranking in the T14: Harvard, Stanford, Yale, and Columbia.¹⁸¹ However, Oklahoma appellate courts do not show a strong preference for citing articles published in particular journals. The citations represented at Table 7 account for only 22% of Oklahoma appellate courts’ citations of law review articles. The remaining 78% of citations to articles are to journals cited only once or twice in an Oklahoma appellate opinion. This indicates that Oklahoma appellate courts are citing law review articles because they are the most relevant to the issues before the court and not because of the prestige of the journal or other extraneous factors.

B. *Treatises*

Treatises provide “detailed analysis, practice tips, references to critical court opinions, and a broad context of an entire area of law.”¹⁸² Some treatises can be highly persuasive and often carry the name of the scholar who authored the treatise.¹⁸³ Treatises were the second most frequently cited secondary source by Oklahoma appellate courts, coming in at a close second behind law reviews.¹⁸⁴ Treatises were often the most cited secondary source in other studies of state appellate courts. Appellate courts in Virginia, Wisconsin, Arkansas, New York and Kansas cited treatises more frequently than any other secondary source.¹⁸⁵

Cornell, and UCLA. 2022 Best Law Schools, U.S. NEWS, <https://www.usnews.com/best-graduate-schools/top-law-schools/law-rankings> (last visited Sept. 17, 2021).

179. Sirico & Drew, *supra* note 155, at 1055; Manz, *supra* note 62, at 1284-85.

180. Detweiler, *supra* note 152, at 101.

181. 2022 *Best Law Schools*, U.S. NEWS & WORLD REPORT, <https://www.usnews.com/best-graduate-schools/top-law-schools/law-rankings> (last visited Nov. 14, 2021).

182. Fox, et al., *supra* note 15, at 40.

183. *Id.*

184. See Table 6.

185. Cooney, *supra* note 61, at 27 (In 2017, treatises were the most frequently cited secondary source by the Virginia and Wisconsin Courts of Appeals), Custer, *supra* note 66, at Table 9 (The Kansas Supreme Court cited treatises more often than any other secondary source in 1995), Manz, *supra* note 62, at Table 12 (Treatises were the most

TABLE 8
 MOST CITED TREATISES BY OKLAHOMA APPELLATE COURTS

<i>Rank</i>	<i>Journal</i>	<i>Total Citations</i>
1	Prosser on Torts ¹⁸⁶	10
2	Appleman Insurance Law & Practice	7
3 (tie)	Wright & Miller, Federal Practice & Procedure Whinery (various titles) (various titles) ¹⁸⁷	6
4	Couch on Insurance	5
5 (tie)	Wharton (various titles) ¹⁸⁸ Widiss (various titles) ¹⁸⁹	4

Some heavily populated states with robust economies have a significant number of legal treatises dedicated to legal issues within the state.¹⁹⁰ For example, it was not surprising to see that the most frequently cited treatise by the New York Court of Appeals was dedicated to New York law.¹⁹¹ In contrast, Oklahoma appellate courts most frequently cite treatises addressing legal issues from a national perspective. However, treatises authored by the Oklahoma evidence scholar Leo Whinery were among the most frequently cited treatises. Oklahoma appellate opinions

frequently cited secondary source by the New York Court of Appeals (excluding miscellaneous sources) for several years studied between 1970 and 2000), and Beard, *supra* note 64, at Table 18 (Treatises were cited more frequently than any other secondary source by the Arkansas appellate courts during various years between 1950 – 2000).

186. PROSSER AND KEETON ON THE LAW OF TORTS (5th ed. 1984), five citations; PROSSER HANDBOOK OF THE LAW OF TORTS (4th ed. 1971), three citations; PROSSER LAW OF TORTS (3rd ed. 1964), two citations.

187. WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE, six citations; WHINERY, MANUAL OF EVIDENCE, two citations; WHINERY, OKLAHOMA EVIDENCE, COMMENTARY ON THE LAW OF EVIDENCE, four citations.

188. WHARTON'S CRIMINAL LAW AND PROCEDURE, one citation; WHARTON'S CRIMINAL EVIDENCE, three citations.

189. ROBERT E. KEETON AND ALAN I. WIDISS, INSURANCE LAW, one citation; WIDISS, UNINSURED MOTORIST COVERAGE, three citations.

190. BARKAN, ET AL., *supra* note 1, at 326.

191. Manz, *supra* note 62, at Table 15 (reporting that a treatise addressing the law of New York was the most frequently cited treatise by the appellate court in 1970, 1993, 1999, and 2000 (tie)).

include citations to treatises addressing Oklahoma law or authored by faculty members at Oklahoma law schools. These treatises were not cited frequently enough to be included in the “most cited” treatises shown at Table 8.¹⁹²

1. Recency of Treatises Cited

Appellate opinions from all three Oklahoma appellate courts cited treatises published an average of twenty-four years prior to the date of the opinion citing the treatise. In contrast, Oklahoma appellate opinions cited law review articles an average of fourteen years prior to the opinion citing the article. This is not surprising as treatises are revised or published more slowly than law reviews articles. The average age of treatises cited varied between the Oklahoma appellate courts. Treatises cited in Oklahoma Supreme Court opinions were published or updated an average of thirty-eight years prior to the opinion. The average age of treatises cited in Oklahoma Court of Civil Appeals opinions was twenty-three years. The Court of Criminal Appeals cited treatises averaging twelve years older than the opinion citing them.

C. The Restatements

The law professor–, judge–, and lawyer–members of the American Law Institute create the *Restatements of the Law* covering thirty-one areas of the law. The Restatements are “primarily addressed to courts”¹⁹³ and “seek to make the law more accessible by distilling common law rules, developed in the courts, into succinct ‘black letter’ rules.”¹⁹⁴ Appellate

192. EUGENE KUNTZ, STATUTORY WELL SPACING AND DRILLING UNITS, cited in *Hall v. Galmor*, 2018 OK 59, ¶ 46, 427 P.3d 1052, 1071; JOYCE PALOMAR’S PATTON AND PALOMAR ON LAND TITLES, cited in *Matter of Est. of Stites*, 2020 OK CIV APP 51, ¶ 13, 476 P.3d 934, 937; HUFF’S OKLAHOMA PROBATE LAW AND PRACTICE, cited in *Matter of Est. of Stites*, 2020 OK CIV APP 51, ¶ 1413, 476 P.3d 934, 937; and SEMPLE’S OKLAHOMA INDIAN LAND TITLES, cited in *Mobbs v. City of Lehigh*, 1976 OK CIV APP 4 ¶ 21, 548 P.2d 1048, 1052. Stradling the line between treatise and practice manual are: KRAETTLI Q. EPPERSON’S VERNON’S VERNON’S OKLA. FORMS REAL ESTATE, cited in *Logan Cnty. County Conservation Dist. District v. Pleasant Oaks Homeowners Ass’n Ass’n*, 2016 OK 65 ¶ 14, 374 P.3d 755, 761; and VERNON’S OKLAHOMA FORMS, cited in *Hobson v. Cimarex Energy Co.*, 2019 OK 58, ¶ 17, 453 P.3d 482, 485.

193. *Frequently Asked Questions*, THE AMERICAN LAW INSTITUTE, <https://www.ali.org/publications/frequently-asked-questions/> (last visited Sept. 18, 2021).

194. FOX et al., *supra* note 15, at 62.

courts take varying positions on the rules set forth in the Restatements. Legal research texts wisely advise writers who plan “to rely to a significant degree on a Restatement rule, [to] learn how it has been received in [their] jurisdiction and perhaps in other jurisdictions as well.”¹⁹⁵

Citations to the Restatements are dispersed nearly equally between opinions of the Oklahoma Supreme Court and Oklahoma Court of Civil Appeals. Forty-eight Supreme Court opinions cited restatement provisions while forty-three Court of Civil Appeals opinions cited the Restatements.¹⁹⁶ No Court of Criminal Appeals opinion cited a Restatement as there are currently no Restatements addressing criminal law.¹⁹⁷

Studies of other appellate courts found varying levels of citation to the Restatements. The New York Court of Appeals frequently cited the Restatements, making them the fourth most cited secondary source out of seven different types of sources.¹⁹⁸ The Restatements ranked near the bottom of secondary sources cited in studies of the Arkansas,¹⁹⁹ Virginia, and Wisconsin appellate courts.²⁰⁰ A study of the Kansas Supreme Court’s 1995 opinions revealed the Restatements (along with dictionaries) was the least frequently cited secondary source.²⁰¹

The Restatements are the third most frequently cited secondary source by Oklahoma appellate courts. The *Oklahoma Legal Research* text notes that “Restatements are perhaps the most persuasive secondary sources to judges because of the role they serve.”²⁰² However, Oklahoma appellate courts cited law reviews and treatises more frequently than the Restatements.

195. KUNZ, et al., *supra* note 2, at 135.

196. See Table 6.

197. AM. L. INST., *Restatements of the Law*, <https://www.ali.org/publications/#publication-type-restatements> (Last visited Sept. 10, 2021).

198. Manz, *supra* note 62, app. at 1306 (Table 12) (reporting that the Restatements were cited a total of 88 times by the Court of Appeals in 1970, 1980, 1990, 1993, 1999, and 2000).

199. Beard, *supra* note 64, app. at 343 (Table 18) (noting that the Restatements were the least frequently cited of all secondary sources by the Arkansas Supreme Court during various years between 1950 – 2000).

200. Cooney, *supra* note 61, at 27 reporting that in 2017 the Restatements were infrequently cited by the Virginia and Wisconsin Courts of Appeals garnering only 2% of all citations to secondary sources. Only the American Law Reports and The Federalist Papers were cited fewer times in appellate opinions.

201. Custer, *supra* note 66, at 145 (Table 9).

202. FOX et. al., *supra* note 15, at 62.

Oklahoma appellate opinions have critiqued the Restatements. In *Miller v. Miller*, while discussing the tort of intentional infliction of emotional distress, the Oklahoma Supreme Court noted that in this area “the Restatement did not actually ‘restate’ the law so much as act as midwife to its creation.”²⁰³ The Restatements have been criticized by others for being “too focused on black-letter law and not on the process and thoughts that go into deciding tort cases.”²⁰⁴ Other scholars have critiqued the Restatements, specifically in the area of torts where “the Restatement, at times, ha[s] a tendency to depart from its mission and attempt to change or create the law.”²⁰⁵

1. Examples of the Use of the Restatements by the Oklahoma Appellate Courts

In *Ely v. Bowman*, the Oklahoma Court of Civil Appeals cited comments to the *Restatement of Trusts* when discussing what evidence is required to rebut a presumption that a trust has been created.²⁰⁶ The comments to the *Restatement of Trusts*, as explained by the court, provide that “evidence of a gift can rebut the presumption that the payor of consideration intended to retain the beneficial interest in the property.”²⁰⁷ The second method of rebutting the presumption of a trust is to show that the purchase price of the property was a “loan to the transferee.”²⁰⁸ The Court of Civil Appeals concluded that the evidence presented supported

203. *Miller v. Miller*, 1998 OK 24, ¶ 32 n.38, 956 P.2d 887, 900 n.38. In a footnote the opinion quotes from a law review article explaining that “the Restatement in this area has generated the law more than it has restated it.” William H. Theis, *The Intentional Infliction of Emotional Distress: A Need for Limits on Liability*, 27 DEPAUL L. REV. 275, 276 (1977). And noting that “[a]cademics, rather than courts, were the prime movers in the development of the tort of intentional infliction of severe emotional distress by outrageous conduct.” Daniel Givelber, *The Right to Minimum Social Decency and the Limits of Evenhandedness: Intentional Infliction of Emotional Distress by Outrageous Conduct*, 82 COLUM. L. REV. 42 (1982).

204. Whiteman, *supra* note 136, at 272.

205. Vicki Lawrence MacDougall, *The Jury Verdict Favored Helen Palsgraf: A Critique of the Restatement (Third) PEH and Foreseeability- “What Does It All Mean?”*, 43 OKLA. CITY U. L. REV. 1, 4 (2019).

206. *Ely v. Bowman*, 1996 OK CIV APP 87, 925 P.2d 567, 573 (citing *Boatright v. Perkins*, 1995 OK 34, 894 P.2d 1091, 1094).

207. *Id.* (citing RESTATEMENT (SECOND) OF TRUSTS § 441 cmt. a-f (AM. L. INST. 1959)).

208. *Id.* (citing RESTATEMENT (SECOND) OF TRUSTS § 441 cmt. c (AM. L. INST. 1959)).

the trial court's finding that no constructive trust was created.²⁰⁹ The appellate court cited only the comments to the *Restatement* when discussing the elements of proof required to rebut the presumption of the creation of a trust.²¹⁰ Other Oklahoma case law and statutes were cited elsewhere in the opinion to support a discussion of other elements of trust law.²¹¹ The court's "naked" citation of comments to the *Restatement* should not be viewed negatively. By citing the comments to the *Restatement* and applying them to the facts presented in the *Ely v. Bowman* case, the appellate court fulfilled the important function of clarifying Oklahoma law on the topic. The court's citation clarified what is acceptable proof for rebutting the presumption that a trust has been created.²¹²

In other opinions, the Restatements and the law of other states have significant influence on matters before the court. In *McFarling v. Demco*, the Oklahoma Supreme Court clarified the status of an agent who commingles funds of a principal.²¹³ The case involved a dispute between a principal and insurance broker over unearned premiums and commissions.²¹⁴ The Court found that the broker becomes the debtor of the principal when funds are commingled.²¹⁵ In reaching this decision the Court quoted from comments to the *Restatement of Agency* and the *Restatement of Trusts*.²¹⁶ The Court also explicitly stated in its opinion that it "agrees with the California law that '[i]f funds held by an agent are commingled with the knowledge and consent of his principal, in the absence of an agreement to the contrary, the inference is that the agent becomes a debtor to the amount received for the principal.'"²¹⁷ The opinion in *McFarling v. Demco* serves the important function of clarifying

209. *Id.*

210. *Id.*

211. *Id.*

212. *See* *Brune v. Crawford and Company*, 2017 OK CIV APP 34, 396 P.3d 861, 866 (citing RESTATEMENT (THIRD) OF AGENCY, § 6.01 "When an agent acting with actual or apparent authority makes a contract on behalf of a disclosed principal, (1) the principal and the third party are parties to the contract" The court did not provide another reference to other authority on this point of law).

213. *McFarling v. Demco, Inc.*, 1976 OK 15, ¶ 9, 546 P.2d 625, 629 (citing *Downey v. Humphreys*, 102 Cal. App. 2d 323, 227 P.2d 484 (1951)).

214. *Id.* ¶ 10, 546 P.2d at 629.

215. *Id.* ¶ 9, 546 P.2d at 629.

216. *Id.* ¶¶ 9-10, 546 P.2d at 629.

217. *Id.* (citing *Downey v. Humphreys*, 102 Cal. App. 2d 323, 227 P.2d 484 (1951)).

Oklahoma law on these points as following California law and the Restatements.

Many Oklahoma appellate opinions cite and discuss Restatement provisions along with citations to Oklahoma cases and other authority. For example, in *Kirkpatrick v. Chrysler Corp.*, the Oklahoma Supreme Court considered whether a consent judgment against one tortfeasor also discharges other tortfeasors liable for the same harm.²¹⁸ The Court quoted from and discussed provisions of the *Restatement of Torts* and *Restatement of Judgments* along with Oklahoma cases and statutes and case law from other states.²¹⁹

D. Legal Encyclopedias

Legal encyclopedias attempt to cover a very wide range of legal topics. The two national legal encyclopedias *American Jurisprudence* and *Corpus Juris Secundum* each cover over 400 topics in approximately 150 bound volumes.²²⁰ Encyclopedias provide very broad coverage of numerous legal issues but “typically provide a brief discussion of a particular issue.”²²¹ Their coverage could be described as a mile wide but an inch deep. Encyclopedias “are not written by well recognized experts” and as a result “are not as authoritative as other forms of commentary.”²²²

State appellate courts cited legal encyclopedias very frequently during the twentieth century.²²³ A study of the Montana Supreme Court found that legal encyclopedias were the most frequently cited secondary source in 1954–1955. Similarly, the most frequently cited secondary source by the Kansas appellate courts for the years 1982–1996 was *American Jurisprudence 2d*. Oklahoma appellate courts cited legal encyclopedias very heavily in the first year examined in this study. In 1976, legal encyclopedias were the most frequently cited secondary source by Oklahoma appellate courts with fifty-four citations. Oklahoma appellate

218. *Kirkpatrick v. Chrysler Corp.* 1996 OK 136, ¶ 22, 920 P.2d 122, 130.

219. *Id.* ¶¶ 22–23, 920 P.2d at 130. *See also* *Williams v. TAMKO Bldg. Prod., Inc.*, 2019 OK 61, ¶ 12, 451 P.3d 146, 152 (citing the RESTATEMENT (SECOND) OF AGENCY § 34, the Oklahoma Constitution, and Statutes in deciding that an implied agent does not have the authority to waive the constitutional rights of the principal).

220. KUNZ et al., *supra* note 2, at 75.

221. FOX et al., *supra* note 15, at 38.

222. KUNZ et al., *supra* note 2, at 76.

223. Friedman et al., *supra* note 80, at 811.

courts' citation of legal encyclopedias dropped dramatically in the years after 1976, falling to just a single citation in 2016.

Scholars do not look favorably on citations to legal encyclopedias. Professor Robert “Bob” Berring noted in his legal research treatise that “[o]nly a fool cites to a legal encyclopedia as persuasive authority.”²²⁴ He also noted that “[i]t is inevitable that in trying to describe everything [the legal encyclopedia] fall[s] quite short of precisely describing anything.”²²⁵ The Kansas appellate courts' heavy citation of encyclopedias, direct quotations to encyclopedias, and using encyclopedias as the only authority to support an argument is described as “troubling.”²²⁶ The author of the Kansas study provided the following explanation of his concerns:

Citing a legal encyclopedia as the sole and final authority is not wise because the immediate case at bar may be different and separate from the cases footnoted in the cited encyclopedia. The noncritical general statements of the heavily-footnoted legal encyclopedia are based upon the throngs of cases embedded in the footnotes. Many times there is a good chance that the cases in the footnotes are different in fact or law from the case before the court.²²⁷

E. Dictionaries

Oklahoma appellate courts make frequent use of legal and non-legal dictionaries. When confronted with a term not defined in the Oklahoma Statutes, Oklahoma appellate courts are required to give the term “the same meaning as . . . attributed to them in ordinary and usual parlance.”²²⁸ Legal and non-legal dictionaries accounted for 13% of the appellate

224. ROBERT C. BERRING, *FINDING THE LAW*, 288 (10th ed. 1995).

225. Snyder, *supra* note 7, at 473 (quoting BERRING, *supra* note 223, at 288).

226. Custer, *supra* note 66, at 130. *See also* State *ex rel.* Derryberry v. St. Elijah's Antiochian Orthodox Christian Church, 1976 OK 69, 551 P.2d 264, 269 (citing several sections of the AM. JUR. ENCYCLOPEDIA for examples in support of its holding). The opinion does not solely rest its holding on the encyclopedia citation and several citations to relevant Oklahoma statutes and cases are provided elsewhere in the opinion.

227. Custer, *supra* note 65, at 125-26.

228. Riffe Petrol. Co. v. Great Nat. Corp., Inc., 1980 OK 112, ¶ 6, 614 P.2d 576, 579. This reference was adapted from Lee F. Peoples, *Is the Internet Rotting Oklahoma Law?*, 52 TULSA L. REV. 1, 14 (2016).

courts' citations to secondary sources.²²⁹ Other state appellate courts cite dictionaries with greater frequency. A recent study revealed that citations to dictionaries made up 55% of the Virginia Court of Appeals' citations to nontraditional sources and 54% of the Wisconsin Court of Appeals' citations to nontraditional sources.²³⁰ SCOTUS has increased its citations of dictionaries in recent years.²³¹

1. Legal Dictionaries

Surprisingly, the only legal dictionary cited in all opinions of the Oklahoma appellate courts for the years examined in this study was *Black's Law Dictionary*. The fifty-four citations *Black's* received make it the most cited individual secondary source during the years of this study. Oklahoma appellate courts turned to *Black's* for definitions of obscure Latin terms like *ipse dixit*²³² and the legal maxim *vigilantibus et non dormienibus jura subveniunt*.²³³ *Black's* has also been used to define more ordinary terms including "money"²³⁴ and "investment."²³⁵

229. See Table 6. For a taste of the scholarly debate over the use of dictionaries by appellate courts, see Samuel A. Thumma & Jeffrey L. Kirchmeier, *The Lexicon Has Become a Fortress: The United States Supreme Court's Use of Dictionaries*, 47 BUFF. L. REV. 227, 290-303 (1999), Jeffrey L. Kirchmeier & Samuel A. Thumma, *Scaling the Lexicon Fortress: The United States Supreme Court's Use of Dictionaries in the Twenty-First Century*, 94 MARQ. L. REV. 77 (2010), and Fritz Snyder, *Legislative History and Statutory Interpretation: The Supreme Court and the Tenth Circuit*, 49 OKLA. L. REV. 573, 584-89, 601 (1996).

230. Cooney, *supra* note 59, at 39.

231. Samuel A. Thumma & Jeffrey L. Kirchmeier, *The Lexicon Has Become a Fortress: The United States Supreme Court's Use of Dictionaries*, 47 BUFF. L. REV. 227, 252-53 (1999).

232. *Ipse dixit*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("something asserted but not proved").

233. *Vigilantibus et non dormienibus jura subveniunt*, BLACK'S LAW DICTIONARY (4th ed. 1951); see also *Osage Nation v. Bd. of Comm'rs of Osage Cty.*, 2017 OK 34, ¶ 42, 394 P.3d 1224, 1239 ("The laws aid those who are vigilant, not those who sleep upon their rights").

234. *Money*, BLACK'S LAW DICTIONARY (5th ed. 1979); see also *In re Wood*, 2019 Okla. Civ. App. 53, ¶ 22, 451 P.3d 182, 188 ("In usual and ordinary acceptance it means coins and paper currency used as circulating medium of exchange, and does not embrace notes, bonds, evidences of debt, or other personal or real estate.").

235. *Investment*, BLACK'S LAW DICTIONARY (5th ed. 1979); see also *In re Wood*, 2019 Okla. Civ. App. 53, ¶ 22, 451 P.3d 182, 188 ("An expenditure to acquire property or other assets in order to produce revenue; the asset so acquired. The placing of capital or *laying out of money* in a way intended to secure income or profit from its employment. ... *To purchase securities* of a more or less permanent nature, or to place money or property in

Black's Law Dictionary includes over 55,000 definitions, was first published in 1891, and is a highly regarded secondary source.²³⁶ However, at least one jurisdiction has clarified that, "Although Black's Law Dictionary is a respected legal source, used by nearly everyone in the legal profession, it is not a binding or mandatory legal authority, and as a matter of law, judicial decisions should not be based solely upon one of its entries."²³⁷

The exclusive citation of *Black's Law Dictionary* by the Oklahoma appellate courts during the years examined in this study is likely a coincidence. A search of Oklahoma appellate opinions revealed the widespread use of a variety of law dictionaries. For example, in a case decided in the early days of statehood, the Criminal Court of Appeals cited six different legal dictionaries and case law from other states in defining the term "jurisdiction."²³⁸ Similarly, a 1986 dissenting opinion in the Oklahoma Supreme Court case of *Fehring v. Universal Fidelity Life Insurance Co.*, cited seven legal dictionaries for the definition of "homicide."²³⁹

2. Non-Legal Dictionaries

Oklahoma appellate courts used non-legal dictionaries to define terms, to understand the sound or pronunciation of words, to define medical, scientific, or technical terms, and when interpreting initiative petitions. Oklahoma law permits courts to take judicial notice of "the sounds of words . . . [and] of phonetic spellings found in dictionaries showing the

business ventures or real estate, or otherwise lay it out, so that it may produce a revenue or income.") (emphasis added).

236. Leslie J. Taylor, *The Evolution of Black's Law Dictionary*, 36 CAN. L. LIBR. REV. 106, 106 (2011).

237. *Monroe v. Korleski*, 2011-Ohio-1784, ¶ 8.

238. *Ex parte Wade*, 1909 OK CR 38, 2 Okla. Crim. 100, 105-07. The opinion cited BLACK'S LAW DICTIONARY, BOUVIER'S LAW DICTIONARY, ANDERSON'S DICTIONARY OF LAW, RAPALJE & LAWRENCE LAW DICTIONARY, KINNEY'S LAW DICTIONARY AND GLOSSARY, and the CYCLOPEDIA LAW DICTIONARY. The court also cited WORDS AND PHRASES and judicial decisions from Alabama, New York, Massachusetts, Texas, among other states.

239. *Fehring v. Universal Fid. Life Ins.*, 1986 OK 39, ¶ 17, 721 P.2d 796, 800. Justice Summers's dissenting opinion cited definitions from ORAM'S DICTIONARY OF THE LAW, GRIFFIS LAW DICTIONARY, COCHRAN'S LAW LEXICON, OXFORD COMPANION TO LAW, RADIN LAW DICTIONARY, BALLENTINE'S LAW DICTIONARY, and BLACK'S LAW DICTIONARY.

pronunciation of words and rules of pronunciation.”²⁴⁰ Oklahoma courts have utilized medical dictionaries to take judicial notice of matters of scientific knowledge “found in generally-accepted medical dictionaries.”²⁴¹

One of the more interesting and somewhat obscure uses of dictionaries by the Oklahoma appellate courts is found in the Oklahoma Supreme Court’s opinion in *Tucker v. New Dominion*.²⁴² The case dealt with the impact of misspelling of the artist Olinka Hrdy’s name in legal notices. The Oklahoma Supreme Court applied the legal doctrine of *idem sonans* in deciding the case.²⁴³ *Idem sonans* precludes “a variant spelling of a name in a document from voiding the document if the misspelling is pronounced the same way as the true spelling.”²⁴⁴ The opinion cited print dictionaries and the online tool Inogolo.com for the pronunciation of Hrdy in the Czech language.²⁴⁵ The Court held that the correct and misspelled names sounded “sufficiently similar to be *idem sonans*.”²⁴⁶

Oklahoma appellate courts have ample opportunity to use dictionaries when reviewing objections to the wording of initiative petitions. Oklahoma’s initiative petition statute allows any citizen “who is dissatisfied with the wording of a ballot title” to file an appeal with the Oklahoma Supreme Court.²⁴⁷ The Supreme Court treats the proceedings as original actions and conducts a trial de novo.²⁴⁸ Many citations to non-legal dictionaries in Oklahoma appellate opinions were discovered in opinions resulting from objections to initiative petition ballot titles. The Oklahoma Supreme Court cited seven definitions appearing in five non-

240. 2 LEO WHINERY, OKLAHOMA EVIDENCE: COMMENTARY ON THE LAW OF EVIDENCE § 6.08 (2d ed. Supp. 2021).

241. *Id.* at § 6.11. DORLAND’S MEDICAL DICTIONARY is specifically cited in Whinery’s treatise when discussing medical dictionaries. DORLAND’S ILLUSTRATED MEDICAL DICTIONARY was cited twice in the appellate opinions examined in this study.

242. *Tucker v. New Dominion*, L.L.C., 2010 OK 14, 230 P.3d 882. This section and the accompanying footnotes are adapted from Lee F. Peoples, *Is the Internet Rotting Oklahoma Law?*, 52 TULSA L. REV. 1, 14 (2016).

243. *See Tucker*, ¶ 17, 230 P.3d at 887.

244. *Idem somans*, BLACK’S LAW DICTIONARY (10th ed. 2014).

245. *Tucker*, ¶ 16, 230 P.3d at 886.

246. *Id.* ¶ 16, 230 P.3d at 887.

247. OKLA. STAT. ANN. tit. 34, § 10 (West 2020).

248. CROWE & DUNLEVY INITIATIVE PETITIONS PRACTICE GRP., THE PETITION PROCESS – THE STEPS AND VARIABLES (2017) (citing *In re Initiative Petition 281*, State Question No. 441, 1967 OK 230, 434 P.2d 941), <https://www.crowedunlevy.com/wp-content/uploads/2018/01/Oklahoma-Initiative-Petition-Process.pdf>.

legal dictionaries in an effort to define the terms “gaming” and “gamble” in the opinion issued in *In re Initiative Petition No. 363, State Question No. 672*.²⁴⁹ Non-legal dictionaries are cited in concurring and dissenting opinions related to initiative petitions. The definition of “gist” found in *Webster’s New International Dictionary* was cited in a concurring opinion in an objection to an initiative petition involving taxation.²⁵⁰ *Webster’s New International Dictionary’s* definition of “cigarette” was cited in a dissenting opinion in another objection to an initiative petition related to taxation.²⁵¹

Various dictionaries published by Webster’s were the most frequently cited non-legal dictionaries by the Oklahoma appellate courts. Table 9 below depicts the five most frequently cited non-legal dictionaries during the years examined in this study. The eight citations to MerriamWebster.com were all found in opinions issued during or after 2016. The impermanent nature of online sources and the dangers of “link rot” should be considered when citing internet sources in judicial opinions. The authority of a judicial opinion and the development of the law are weakened when an online source cited in a judicial opinion becomes unavailable. The Oklahoma appellate courts should consider archiving internet sources cited in opinions.²⁵²

249. *In re Initiative Petition No. 363, State Question No. 672*, 1996 OK 122, ¶ 34, nn.51-52, 927 P.2d 558, 570 nn.51-52.

250. *Oklahoma Indep. Petrol. Ass’n v. Potts*, 2018 OK 24, ¶ 7, 414 P.3d 351, 362-63.

251. *Oklahoma’s Children, Our Future, Inc. v. Coburn*, 2018 OK 55, ¶ 10, 421 P.3d 867, 885-86 (Wyrick, J., dissenting).

252. See Peoples, *supra* note 97, at 14, and Lee F. Peoples, *Internet Citations in Oklahoma Attorney General Opinions*, 107 L. LIBR. J. 347 (2015), for examples of link rot in Oklahoma law and solutions to correct the problem.

TABLE 9
 MOST CITED NON-LEGAL DICTIONARIES BY OKLAHOMA APPELLATE
 COURTS

<i>Rank</i>	<i>Journal</i>	<i>Total Citations</i>
1	Webster's New International Dictionary (2 nd)	11
2	MerriamWebster.com	8
3	Webster's New International Dictionary (3 rd)	7
4 (tie)	Webster's New Collegiate & Merriam Webster	5
5	Webster's Third International Unabridged	3

V. INFLUENCE OF COMPUTER ASSISTED LEGAL RESEARCH

The years explored in this study were chosen in part to determine if the advent of computer assisted legal research had any impact on the Oklahoma appellate courts' citation of secondary sources. Electronic legal research was in its infancy in the mid-1970s.²⁵³ Shortly after the second year examined in this study, 1996, the majority of attorneys surveyed by the American Bar Association reported preferring to receive legal research materials in electronic formats.²⁵⁴ The years following 1996 saw continued expansion of the marketplace for electronic legal research products. Casemaker and Fastcase launched low-cost research platforms near the end of the millennium.²⁵⁵ In 2007, the Oklahoma Bar Association and Fastcase reached an agreement to provide all bar members with access to the Fastcase research platform.²⁵⁶ Electronic legal research was ubiquitous

253. KENDALL F. SVENGALIS, *LEGAL INFORMATION BUYER'S GUIDE & REFERENCE MANUAL* 159, 168 (2019 ed.) (stating Lexis launched its electronic legal research system in 1973 and Westlaw followed in 1975).

254. AM. BAR ASS'N, *LARGE LAW FIRM TECHNOLOGY SURVEY, 1998 SURVEY REPORT* 67 (1998) (explaining the 1998 Large Firm Technology Survey conducted by the American Bar Association reported that 62.4% of attorneys preferred to receive legal research materials in electronic formats).

255. SVENGALIS, *supra* note 252, at 162, 174-75.

256. *See generally* Jim Calloway, *OBA Launches Fastcase Benefit*, 78 OKLA. B.J. 133 (2007).

by the final years examined in this study when free or low-cost access to primary sources of law was readily available online.²⁵⁷

Appellate judges, their clerks, and attorneys now have access to an immense amount of primary and secondary legal sources online. A casual observer might conclude that appellate courts would cite a broader range of materials given their easy accessibility.²⁵⁸ In reality, the number of secondary sources cited by appellate courts is declining as the wide-spread availability of these sources grows. As depicted in Table 6, Oklahoma appellate courts' citation of the majority of secondary sources has decreased significantly since the advent of electronic legal research. Citations to law reviews, treatises, legal encyclopedias, and A.L.R.s in judicial opinions have all declined as the use of electronic legal research tools became commonplace.

The decline in the citation of certain types of secondary sources is understandable by considering the purpose of these sources. The purpose of legal encyclopedias and A.L.R.s is to organize, summarize, explain, and provide access to primary sources of law. Treatises and law review articles also fulfill these purposes while sometimes adding theoretical discussions or the opinions of experts in a particular field. Electronic legal research's powerful full text searching offers an efficient way to directly access primary law. Judges, clerks, or attorneys no longer need to utilize a secondary source as an intermediary to find relevant case law. Studies have connected the rise of electronic legal research with a decline in citations to law reviews and other secondary sources.²⁵⁹ As explained by Michael Whiteman the extensive availability of law online means that:

appellate courts are tightening-up their jurisprudence and relying less and less on authority that comes from outside their own recent past. Thus, attorneys and judges should keep in mind that while a vast array of information is out there, they should continue to hone their research skills to retrieve and advocate based primarily on their home jurisdiction's jurisprudence.²⁶⁰

257. SVENGALIS, *supra* note 252, at 159 (explaining free online access to federal and state judicial opinions was available through Google Scholar, Law 360, the Public Library of Law, and other providers).

258. Whiteman, *supra* note 136, at 275.

259. Detweiler, *supra* note 152, at 93, 96; Whiteman, *supra* note 136, at 275.

260. Whiteman, *supra* note 136, at 275.

VI. CONCLUSION

Oklahoma appellate courts have found certain secondary sources to be persuasive authority including documents related to a case before the court, ABA ethics opinions, Oklahoma's Title Examination Standards, works by legal scholars, and judicial opinions from other jurisdictions. Oklahoma appellate courts have found secondary sources unpersuasive on several occasions. For example, the Oklahoma Court of Civil Appeals declined to recognize a new tort based in part on "a federal publication of unknown content."²⁶¹

The Oklahoma Supreme Court cites secondary sources more frequently than the state's two other appellate courts. This is appropriate given the Supreme Court's role as final arbiter of Oklahoma law and inclination toward resolving public policy issues. All three Oklahoma appellate courts cite secondary sources at roughly the same rate as appellate courts in Virginia, Wisconsin, and Ohio but less frequently than SCOTUS and New York appellate courts. The Oklahoma Supreme Court's citation of secondary sources has declined during the years examined in this study. Additionally, the jurisdictional reason that a case comes before the Oklahoma Supreme Court was found to have no influence on the citation of secondary sources in the Court's opinion.

Seventy-five percent of secondary sources cited in Oklahoma appellate opinions were used to discuss points and policy, to demonstrate a particular position, or to indicate where a reader might find more information about a particular topic. Twenty-five percent of secondary sources cited in Oklahoma appellate opinions were used as support for legal or non-legal statements.

Secondary sources had varying levels of influence on Oklahoma appellate opinions. Most secondary sources had only minimal (73%) or moderate (25%) influence on the opinion they were cited in. A very small number (0.01%) of secondary sources appeared to have significant influence on the civil appellate opinion they were cited in.

Oklahoma appellate courts cited a wide variety of secondary sources in opinions issued during the years of this study. Law review articles were the most frequently cited, accounting for twenty-two percent of all secondary source citations. Citations to law review articles in Oklahoma appellate opinions have declined significantly from a high point of forty-

261. *Carista v. Valuck*, 2016 OK CIV APP 66, ¶ 8, 394 P.3d 253, 257.

seven citations in 1976 to only thirteen citations in 2020. A similar decline has been found in studies examining law review citations in opinions of SCOTUS, United States Courts of Appeals, and several state appellate courts.

Seventy-four percent of all law review citations were found in opinions issued by the Oklahoma Supreme Court. Court of Civil Appeals opinions included 23% of law review citations while the Court of Criminal Appeals opinions included just 3% of law review citations. This allocation of citations is similar to the findings of studies of other intermediate state appellate courts. It is understandable that the Oklahoma Supreme Court may cite more law review articles examining public policy issues given the Court's role in resolving issues of public policy.

Oklahoma appellate courts cited law review articles published an average of fourteen years before the citing opinion. The most frequently cited journal by the Oklahoma appellate courts during the years examined in this study is the Oklahoma Law Review. Journals published by elite law schools were also frequently cited. However, the majority (78%) of law reviews cited in appellate opinions were journals cited only once or twice during the years of this study. Oklahoma appellate courts do not blindly cite law review articles because of the journal's prestige. Instead, reviews are cited because they contain information relevant to cases before the court.

Legal treatises were the second most frequently cited type of secondary sources in Oklahoma appellate opinions. Well-known treatises addressing issues from a national perspective were cited the most frequently. Professor Leo Whinery's evidence treatises were the most frequently cited treatises addressing Oklahoma law. Other treatises addressing Oklahoma law were often cited in the courts' appellate opinions but not enough to make the list of the five most cited treatises. The average age of treatises cited in Oklahoma appellate opinions was twenty-four years prior to the publication of the opinion.

Restatements of the Law are the third most frequently cited secondary source in Oklahoma appellate opinions. Citations to the Restatements are approximately equally distributed between opinions of the Supreme Court and Court of Civil Appeals. Oklahoma appellate court opinions citing and discussing the Restatements perform the important function of clarifying Oklahoma law on proposals set forth in the Restatements.

Legal encyclopedias were the most frequently cited secondary source by Oklahoma appellate courts during the first year examined in this study,

1976. Other state appellate courts also frequently cited legal encyclopedias during this period. Encyclopedia citations decreased dramatically in the latter years of this study, falling to just a single citation in 2016. The easy accessibility of primary sources of law through computer assisted legal research is one explanation for the decline in citations to legal encyclopedias.

Legal and non-legal dictionaries are often cited by Oklahoma appellate courts. *Black's Law Dictionary* was the only legal dictionary cited in all opinions examined in this study. While *Black's* is a highly regarded source, it is not the "official" dictionary of choice of Oklahoma's appellate courts. In years other than those examined in this study, Oklahoma appellate courts have cited numerous other legal dictionaries. Non-legal dictionaries are cited in Oklahoma appellate court opinions to define words, as a guide to pronunciation, and in cases involving initiative petitions. The most frequently cited non-legal dictionaries are published by Webster's. Oklahoma appellate courts have cited online dictionaries. Care should be taken when citing online sources to ensure future researchers are able to access the sources cited.

APPENDIX A**

*Citation Study Data Gathering Instructions***Oklahoma Appellate Court Citation Project – Secondary Sources**

Professor Peoples is conducting a study of the opinions of the Oklahoma Supreme Court, Court of Civil Appeals, and Court of Criminal Appeals. This study explores the use of secondary authority by the Oklahoma Supreme Court, Oklahoma Court of Civil Appeals, and Oklahoma Court of Criminal Appeals. Opinions from the years 1976, 1996, and from 2016-2020 will be examined and analyzed for their use of secondary authority.

Citations to treatises, law reviews, Restatements, non-law dictionaries, and other non-legal secondary sources are analyzed in-depth. The study considers the impact of computer assisted legal research on the courts' citation practices.

Data for the following years and following courts have already been entered into the spreadsheet:

OK (Oklahoma Supreme Court): 1976, 1996, 2016, 2017, 2018

C. Civ. App (court of civil appeals); 1976, 1996, 2016

COCA (Court of Criminal Appeals) 1976, 1996, 2016

You'll be collecting and entering data for these courts and years:

OK (Oklahoma Supreme Court): 2019 & 2020

C. Civ. App (court of civil appeals); 2017-2020

COCA (Court of Criminal Appeals) 2017-2020

You'll log data from opinions into a google spreadsheet. Access to the sheet will be shared with you.

You can pull these opinions up in Westlaw, Lexis or OSCN. OSCN may be the easiest because it allows you to view a list of all opinions issued by a particular appellate court for a particular year.

Some General Rules About Counting – don't double a citation to the same secondary source if cited multiple times in the same opinion including sources cited in the main opinion, concurring or dissenting opinions. For example, if a secondary source is cited 5 times in the court's main opinion and 3 times in a dissenting opinion it is counted only in the main opinion and once in the dissenting opinion.

** The appendix remains largely unaltered to preserve the structure of the author's original study. [-EDS]

So that it will be easy to work with the data, change the color of the font for the data you enter from black to blue for every other case. To change font, click the “A” button at the top.

If a case cites multiple secondary sources, enter each citation individually in a new row.

Enter data into the following columns on the spreadsheet as instructed below.

Choose the spreadsheet “OK” to enter data about Oklahoma Supreme Court Opinions or C. Civ. App for the Court of Civil Appeals. The “COCA” sheet is for data about COCA opinions.

If a case does not cite any secondary authority, you do not need to list the case citation in the spreadsheet.

Column: Court Opinion

Enter the citation for the case: Dani v. Miller, 2016 OK 35, 374 P.3d 779, cert. denied, 137 S. Ct. 481 (2016).

Column: Year – enter 4-digit year of the opinion.

Column: Jurisdiction Code – The Oklahoma Supreme Court has jurisdiction to hear the following cases:

1) Appellate Jurisdiction, an appealable decision of another court commenced by filing a petition in error.

2) Petition for Certiorari may refer to three types of cases: (a) certiorari to a Court of Civil Appeals pursuant to jurisdiction conferred by Okla. Const. art. VII, § 5, and the last sentence of Okla. Stat. 20, § 30.1; (b) the extraordinary writ of certiorari issued in an original action pursuant to Const. art. VII, § 4; and (c) certiorari review of a certified interlocutory order pursuant to Okla. tit, 12, § 952(b)(3).

3) Certified Interlocutory Appeal, appeal of lower court reviewed in advance of final judgment.

4) Appeal from tribunal other than district court.

5) Original Jurisdiction.

6) Certified Question of Law.

The Court of Civil Appeals has jurisdiction to hear the following cases:

- 1) Petition in Error.
- 2) Petition for Certiorari.
- 3) Reviewing Decisions of the Workers Compensation Court of Existing Claims.²⁶²

The Court of Criminal Appeals has jurisdiction to hear the following cases:

- 1) Appellate Jurisdiction, an appeal of a lower court decision.
- 2) Nolo Contendre Appeal.
- 3) Juvenile Appeal.
- 4) Capital Appeal.
- 5) Accelerated Docket Appeal.
- 6) Appeal of Final Judgment Under Post Conviction Procedure Act.

For each opinion enter the corresponding number in the under the jurisdiction column. You can normally determine the basis for a case's jurisdiction by reading the first paragraph of the opinion. Once you have determined the basis – enter the code in the column. If you can't determine it put a “?” in the column. These explanations of the courts jurisdictional basis were adapted from HARVEY D. ELLIS, JR. & CLYDE A. MUCHMORE, *OKLAHOMA APPELLATE PRACTICE* (2018).

Reasons an Appellate Court May Cite a Source (Code 1-5):

Read the opinion where the court is citing the source and see if the reason fits with one of the 5 given. Enter the number assigned to the reason (1-5). If you can't determine it put a ? in the column. The following categories were adopted from Neil Bernstein's study of the United States Supreme Court's 1965 term published in the Georgetown Law Journal as *The Supreme Court and Secondary Source Material: 1965 Term*.²⁶³

Discussion – “The “discussion” category contains—assertions

262. The Court of Existing Claims was created by the Administrative Workers' Compensation Act of 2013. OKLA. STAT. TIT. 85A, § 400 (Supp. 2020). The court was previously known as the “Workers' Compensation Court.”

263. Bernstein, *supra* note 3, at 68-69.

supported by case citations or reasoning alone, followed by reference to a secondary source that presumably examines the matter extensively. In addition, this category includes citations to books or articles which discuss a question that the-citing Justice raised but-explicitly refused to resolve in any way.”²⁶⁴

“Views and quotes” contains those references which were made to show the position of an identified person or persons, and not to put forth the particular position as accurate or approved.”²⁶⁵

“The “location” citations are those which indicate where certain data can be found, without any-indication that the reference is-completely truthful or conclusions as to the significance of the data.”²⁶⁶

Support of Legal Statements - primary purpose of the citation is to justify an assertion of a point of law - the citation is used as authority for the statement.²⁶⁷

Support of Nonlegal Factual Statements - primary purpose of the citation is to justify an assertion of a fact - the citation is used as authority for the statement.²⁶⁸

Level of Influence of Source Cited (code 1-3) Read the opinion where the court is citing the secondary source and see if you can classify the influence as 1, 2 or 3 and enter that number in the spreadsheet. If you can't determine it put a ? in the column. The levels of influence categories were adapted from Richard C. Kopf's study of the Nebraska Supreme Court's citation of the *Nebraska Law Review*.²⁶⁹

To decide qualitatively whether or not the law review article influenced the writer of the opinion, we employed three criteria. First, we determined if the article was discussed (or quoted) by the author of the opinion. If the article was merely cited but not discussed (or quoted), the article was considered to have had only a small influence on the writer (“minimal influence”). Second, if the article was discussed (or quoted) by the author rather than merely cited, it was considered to have had a midrange influence on the writer of the opinion (“moderate influence”).

264. *Id* at 70.

265. *Id.*

266. *Id.*

267. *Id.*

268. *Id.*

269. Richard G. Kopf, *Do Judges Read the Review? A Citation-Counting Study of the Nebraska Law Review and the Nebraska Supreme Court, 1972-1996*, 76 NEB. L. REV. 708, 719-20 (1997).

Third, if the article was discussed (or quoted), and the author of the opinion appeared to adopt or follow the reasoning of the article when resolving the issue for which the article was cited, the article was listed as having a major influence on the writer (“significant influence”).²⁷⁰

Cited with Signal: If an opinion cites a secondary source with a signal (See, See Also, etc....) list the signal in this column.

Column: Total citations to secondary sources appears in majority opinion, plurality, concurring, dissenting - Enter the total number of citations to secondary sources in each opinion – note that most cases will only have a majority opinion.

Total Number of Secondary Sources Cited in Cited in Majority, Plurality, Concurring, Dissenting - Total up all secondary sources cited in an opinion and enter the number in the correct column. Don’t double a citation to the same secondary source if cited multiple times in the same opinion including sources cited in the main opinion, concurring or dissenting opinions. For example, if a secondary source is cited 5 times in the court’s main opinion and 3 times in a dissenting opinion it is counted only in the main opinion and once in the dissenting opinion.

Secondary Sources

Column: Citation to treatise / hornbook / practice guide etc.... Include each new citation on a new row. Treatises include scholarly books, practice guides, etc. RB 1.72... Other publications can be included in the other secondary legal sources column. If you have a doubt include it in the treatise column and Prof. Peoples will decide.

Column: Treatise year – If a year is included with the treatise citation put it here – otherwise put year of the case it appears in. New row for each treatise cited.

Column: Law review full citation – Include the full citation including authors name, name of journal, name of article and year and volume and page number. Each citation goes on a new row.

270. *Id.*

Column: Name of Journal – Put the bluebook abbreviation for the name of each journal cited – new row for each article cited.

Column: Law review year – Put year of law review article here – new row for each law review cited. RB 1.69; Capital L - DISC

Column: Citation to law dictionary name and definition cited – Put the name of the law dictionary cited and the word defined and include each new citation on a new row.

Column: Citation to non-law dictionary name and definition cited – Put the name of the non-law dictionary cited (Webster’s for example) and the word defined (truck for example) Include each new citation on a new row.

Column: Citation to restatement – Give the full citation. Include each new citation on a new row.

Column: Citation to Amicus Brief - Copy and paste in any cites to an **amicus brief**. New row for each cite to a different amicus brief.

Column: A.L.R. cite – Copy and paste in cites to A.L.R.s. New row for each cite – and remember to record the reason cited, level of influence, or cited with signal in the columns to the left.

Column: Legal Encyclopedia - Copy and paste in cites to legal encyclopedias. New row for each cite – and remember to record the reason cited, level of influence, or cited with signal in the columns to the left.

Column: citations to other 2ndary legal source - Copy and paste in cites to other secondary legal sources. New row for each cite – and remember to record the reason cited, level of influence, or cited with signal in the columns to the left.

Column: Citations to non-legal secondary sources - these could be statistics, or any other non-legal source - copy and paste in cites to other secondary non-legal sources. New row for each cite – and remember to record the reason cited, level of influence, or cited with signal in the columns to the left.