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Citation Practices of the Kansas Supreme Court and Kansas Court of Appeals

Joseph A. Custer

I. Introduction

This article examines the citation practices of the Kansas Supreme Court and the Kansas Court of Appeals. The Kansas Court of Appeals has only been in its present form since 1977. This study therefore is based heavily on a fifteen year period from 1982 through 1996: fifteen years in which both the Kansas Supreme Court and Kansas Court of Appeals have been in operation. In addition, this study examines how the Kansas court citation practices have changed over the years, beginning with Kansas Supreme Court citation practices in 1935. Kansas practitioners may want to note what the courts in Kansas have cited to over the years and what they are currently citing to.

This article concludes with a discussion addressing the issue of policy making, and whether policy goals of Kansas judges can be discerned from examining the citation practices of the courts.

Other writers have analyzed citation practices in various parts of the country.¹ The writers have looked at opinion citation practices over the years sometimes picking three or more sample years to analyze. This current study sampled the years 1935, 1965 and 1995. In 1935 and 1965, 100 cases in each year from the Kansas Supreme Court were analyzed. In 1995, 200 cases were analyzed, 100 from both the Kansas Supreme Court and the Kansas Court of Appeals. Citation to Primary and Secondary sources of law was the focus in this study. All cites were recorded as long as the cites were distinct. If an opinion was cited

more than once in a case but different issues of the cited opinion were discussed the cites were treated as distinct. Any citation to a code or regulation was counted separately as long as there was a distinct subdivision indicating different code or regulation sections. All parts of the opinion were studied and analyzed, including dissenting opinions. The 200 cases from 1995 along with the 100 cases from both 1935 and 1965 were checked manually. Additional work, especially on secondary sources, was done through computer-assisted legal research.

II. Judicial Opinion Citations

A. Kansas Judicial Opinion Citations

The judicial opinion was by far the source most cited by the Kansas Courts. Throughout the years studied, judicial opinions were heavily cited by the Kansas Supreme Court: 63.8% of all cites in 1935; 68.1% in 1965; and 69.1% in 1995. The Kansas Court of Appeals cited to judicial opinions 68.5% in 1995. The Kansas Supreme Court is the most frequently cited source among these judicial opinions. The Kansas Supreme Court in 1995 cited to itself (Kansas Supreme Court) 59.4% of the time. See Table 4. The rate of citation to the Kansas Supreme Court was 56.2% by the Kansas Court of Appeals in 1995. The rate of citation by the Kansas Supreme Court to itself was even higher in 1965 and 1935, over 70% each year. These findings are very much in tune with other articles that have analyzed citation

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practices showing a definite citation preference for the state high court.² As far as citing to the Kansas Court of Appeals is concerned, the Kansas Supreme Court cited to the Kansas Court of Appeals 5.4% in 1995. The Kansas Court of Appeals cited to itself 16.0% in 1995. 16% is significant considering the fact that only a fraction of the total Kansas Court of Appeals cases are published each year. See Table 3.

B. Federal Judicial Opinion Citations

Citation to federal judicial opinions has increased in the Kansas Supreme Court from 6.5% in 1935 to 20% in 1965 and 19% in 1995. The reason for this increase from 1935 is probably the greater number of "civil cases with constitutional or regulatory questions [which] may include numerous citations to federal opinions. The use of federal opinions is tied also to the increase in the number of opinions involving criminal issues."³ Fifty-six percent of the Kansas Supreme Court cites to federal judicial opinions were to the United States Supreme Court. Thirty-two percent were to federal appellate courts. Twelve percent were to the federal district courts.

Citation to federal case authority by the Kansas Court of Appeals was comparatively less but still significant at 13.1%. Forty-eight percent of the Kansas Court of Appeals cites to federal judicial opinions were to the United States Supreme Court. Thirty-eight percent were to the federal appellate courts. Fourteen percent were to the federal district courts.

C. Cited Judicial Opinions from Other States

Of all case cites, the Kansas Supreme

Court cited to other state opinions 14.4% in 1935, 5.8% in 1965 and 13.9% in 1995. Therefore, while citation to other state courts has fluctuated and slightly dropped, there still appears to be a reliance on other state opinions despite the fact that the pool of Kansas case law and in-state precedent has grown significantly over the years.

What factors influence the Kansas courts in relying on other state precedent? One factor that can be dispelled in this study is the West Regional Reporter factor. One could hypothesize that the courts would cite more often to other states in its Pacific West Reporter region, particularly before the advent of computer-assisted legal research. The idea being that the regional reporter, before the advent of computer-assisted legal research, would be the most prevalent source for other state judicial opinions in Kansas law libraries and therefore the cases within its covers the most cited to. However, if one looks at the numbers, this hypothesis does not hold true. The Kansas Supreme Court cited to other state courts reported in the Pacific West Regional Reporter only 21 times in 1965 but cited to other state opinions a whopping 79 times in 1995 (after the advent of computer-assisted legal research).

Therefore, what does account for Kansas citing to other state courts? Maybe this question can be answered by tabulating what states Kansas does cite to and how often? "Differences in citation rate among the several states has been ascribed variously to such factors as relative geographic proximity, population size, migration patterns, level of urbanization, and industrialization, amount of accumulated precedent and prestige."⁴ Many of these

factors explain why the Kansas Courts cite California and New York the most often (66 times each over the three sample years total). See Table 5. The above-mentioned factors of size, urbanization and industrialization also explain why Florida, Illinois, Massachusetts, New Jersey, Ohio, Texas and Washington were cited more frequently than most other states. Another factor quoted above, geographic proximity, comes to the forefront because Colorado, Iowa, Minnesota, Missouri, Oklahoma and Wisconsin were frequently cited states.

Another factor appearing to contribute to the Kansas Courts citing to other state precedent is the "string citation." In 1935, the Kansas Supreme Court had 21 string cites (comprised of at least four cites per string.) The Kansas Supreme Court had 31 and 32 string cites respectfully in 1965 and 1995. The Kansas Court of Appeals had 18 string cites in 1995. 'Why so many string cites?' The Kansas courts many times use string citations in order to show state jurisdiction tracking. See Table 6. While this practice of using a string citation for jurisdiction tracking may not always be merited, it is a comparatively better method than using a string citation for aesthetic counting. (The idea that if enough cases are tossed at the reader he or she will simply capitulate under the sheer burden of authority).

D. Age of the Cases Cited

Both the Kansas Supreme Court and the Kansas Court of Appeals have a preference for recently-decided opinions. The Kansas Supreme Court in 1995 cited to cases decided within the last 15 years 74.8% of the time. Uniformly, the Kansas Court of Appeals cited to cases decided within the last 15 years 74.7%

of the time. To better illustrate the preference for recent case authority in Kansas, only 10.7% of the cases decided before 1970 were cited to by the 1995 Kansas Supreme Court and only 10.4% of the cases decided before 1970 were cited to by the Kansas Court of Appeals. See Table 7A-7B.

What accounts for this inclination toward citing more recently decided decisions? This proclivity is not peculiar to Kansas. Other citation studies have shown the same partiality for recently-decided opinions. It can best be explained as follows:

[L]ater decisions seem to the justices to be both more in point and more persuasive. The older the case, the more remote the social context in which it arose and the less likely that its relevant facts will be, or seem, comparable to those in the case before the court. An older decision is also more likely to have been overruled by legislation, by the court itself, or by changes in federal constitutional law. Finally, the legal culture may have changed; the climate of legal opinion about the question may have shifted, so that reasoning that seemed powerful at the time is no longer legally compelling. We should not consider this decline in citation power of decisions anomalous. It would be remarkable if no such decline were to take place.⁵

III. Legislative and Related Authority

A. Kansas Legislative and Related Authorities.

The Kansas Supreme Court has cited to legislative and related authorities in an unfal-

tering fashion over the years. Actually, there has been a small increase in the use of legislative and related authorities in Kansas since 1935. In 1935, the Kansas Supreme Court cited to legislative and related authorities 20.9%. In 1965, the Kansas Supreme Court cited to legislative and related authorities 23.1%. In 1995, the Kansas Supreme Court cited to legislative and related authorities 28.9%. Similarly, the Kansas Court of Appeals in 1995 cited to legislative and related authority 28.6%.

The fact the study shows citation to legislative and related authorities in Kansas has increased to 28.9% since 1935 is probably related to the increased amount and number of statutory and regulatory codification. Not surprisingly, citation to the current statutory code of Kansas was by far the most cited legislative and related authority source by both the 1995 Kansas Supreme Court (79%) and the 1995 Kansas Court of Appeals (64%). The Kansas Supreme Court also cited to the currently in force state statutes at a frequent level in both 1965 (48%) and 1935 (66%). See Table 8 for the numbers of other legislative and related authorities that were cited over the sample years. One interesting disparity exists between the Kansas Supreme Court and the Kansas Court of Appeals concerning citation prevalence to ethical rules. The Kansas Supreme Court cited to ethical rules 53 times in 1995 while the Kansas Court of Appeals in 1995 did not cite to ethical rules at all. This disparity is due in large part to the fact that the Kansas Supreme Court has the sole authority to regulate the legal profession in Kansas. Overall, however, the references by both Courts to other related legislative authorities are negligible.

B. Federal Legislative and Related Authorities

There were very few citations to the federal sources of legislative and related authorities. See Table 8. 1965 was the only year in which over 10% of the total legislative and related authority cites were to a federal legislative or related source. (10.7% of legislative and related authority cites were to the United States Constitution).

C. Other State Legislative and Related Authorities

The Kansas Supreme Court and Kansas Court of Appeals rarely cite to legislative and related authorities of other states. In no sample year was there a greater percentage than 3.4% of citations to other states' legislative and related authorities.

IV. Cites to Secondary Sources

A. Law Reviews

In overall percentages, the Kansas Supreme Court cites to secondary sources less than it used to. In 1935, of all sources cited, the Kansas Supreme Court cited to secondary sources 15.3% of the time. In 1995, the Kansas Supreme Court cited to secondary sources only 2.0%. However, even in the context of decreasing use of secondary sources, the Kansas courts, primarily the Kansas Supreme Court, have substantially increased the number of law review articles cited. In 1935, less than 1% of Kansas Supreme Court cites were to law reviews. There were, of course, not many scholarly law reviews in existence in 1935. In 1995, the Kansas Supreme Court cited to law reviews at a rate of 31.8% of all secondary sources. The Kansas Court of Appeals cited to law reviews at a lessor rate of 9% in 1995. The

reason for this disparity between the two courts may lie in what they view as their functions. It may be argued that the Court of Appeals sees its role as resolving a large number of disputes while the less-hurried, more selective Supreme Court may view its role as more a policy-making one.⁶

As to be expected, the Kansas Courts cite most often to the two general law reviews in the state, the *Kansas Law Review* and the *Washburn Law Review*. Over the 15-year period from 1982 through 1996, 39.8% of all law review cites by the Kansas Supreme Court were to in-state law reviews. See Table 10A. The Kansas Court of Appeals during the same 15-year time period cited to in-state law reviews 53% of the time. While the Kansas Courts prefer to cite in-state law review articles, they cite frequently to journals from elite schools when citing out-of-state articles. For example, the five most cited out-of-state law reviews cited by the Kansas Supreme Court in the 15-year period were the *Harvard Law Review*, *Yale Law Journal*, *Virginia Law Review*, *Columbia Law Review* and *California Law Review*. The Kansas Court of Appeals three most cited out-of-state law reviews were the *Harvard Law Review*, *Yale Law Journal*, and *Columbia Law Review*. See Table 10B. Note that even after one accounts for the citations to the in-state and elite law school reviews there are still 21 law reviews from across the country that were cited to at least four times over the 15-year time period. The courts are citing to more and more law reviews. Therefore, as a practical matter, an attorney in a Kansas court may cite to a "second tier" law review and still have some persuasive authority. It may only be a slimmer reed on which the

attorney may lay his/her argument.

Even though there is an increase in citation to law review articles, there is not necessarily a concomitant increase in influence on the judgment of the court. A good share of the courts citations to law review articles appear to be somewhat mechanical. Of the 510 Kansas Supreme Court cites to law review articles during the 15-year period from 1982 through 1996, 35.7% were to legal periodicals listed as "one of several authorities" cited to support a particular point. See Table 13A. "One of several authorities" accounted for 26.1% of the law review citations by the Kansas Court of Appeals during the same period. See Table 13B.

B. Recency of Law Review Articles

Note the recency of the law review articles being cited. 81.4% of the articles cited by the 1995 Kansas Supreme Court were to law review articles written within the last 15 years. Similarly, 74.3% of the articles cited by the 1995 Kansas Court of Appeals were to those articles written within the last 15 years. See Tables 11A and 11B. The recency of the articles may indeed indicate some policy-making trends on the part of the Kansas courts because more than most research sources, law reviews are forward looking. Citing to the more recent law reviews may indeed indicate the courts are looking at policy in addition to the case at bar.

C. Restatements

Other secondary sources consistently cited to in Kansas are the Restatements. The Restatements of the law were an attempt in the early twentieth century to stem the ever-increasing flow of case law that was being

unleashed by the West Publishing Company.⁷ The Restatements were cited to faithfully by both the Kansas Supreme Court and Kansas Court of Appeals from the period of 1982 through 1996. The Supreme Court averaged just over 29 cites annually to the Restatements during this 15-year period and the Kansas Court of Appeals averaged just over 21 cites during this period. It is interesting to note that of all cites to secondary sources 20.8% of the Kansas Supreme Court cites and 29.5% of the Kansas Court of Appeals cites to the Restatements fell under the category of being used as only "one of several authorities." See Table 14A. One of the main ideas behind the creation of the Restatements was that no one would have to go to the voluminous cases again since the Restatements would cap off the law. Apparently this grand idea did not work. Even with the wonderful work of such scholars as Samuel Williston (*Restatement of Contracts*), and Richard Powell (*Restatement of Property*) available, the courts still insisted on citing to other sources of law in addition to the *Restatements* to support their points. It needs to be noted that the *Restatement of Torts* holds the distinction of being the second-most-cited secondary source after *American Jurisprudence 2d* in this study. Amazingly, the *Restatement of Torts* was cited to 320 times by the Kansas Supreme Court during the 15-year period of 1982 through 1996. It was cited to 180 times by the Kansas Court of Appeals during the same period. Only two other *Restatement* sources were cited to in any significant amount during this 15-year period; the *Restatement of Contracts* and the *Restatement of Trusts*. See Tables 14A and 14B.

D. *American Jurisprudence 2d* (*Am. Jur. 2d*)

The most cited secondary source over the 15-year period of 1982 through 1996 was *American Jurisprudence 2d*. Citing to legal encyclopedias has always been criticized.⁸ Legal Encyclopedias are popular because of their introductory nature and simple straight forward approach. However, their utility as a cited source has frequently been abused by the courts. Kansas courts have relied on them heavily in the past. See Tables 9, 15A, 15B, 16A, and 16B. Most recently, however, the Kansas Supreme Court and the Kansas Court of Appeals have cited less to *Am. Jur. 2d*. The Kansas Supreme Court and Kansas Court of Appeals cited to *Am. Jur. 2d* 267 times over the last five years of the 15-year study. Two-hundred-sixty-seven seems to be a large number but it pales when one compares it to the 1099 citations to *Am. Jur. 2d* in the first 10 years of the 15-year study. See Tables 15A and 15B.

The citations to *American Jurisprudence 2d* by both the Kansas Supreme Court and the Kansas Court of Appeals during the period of 1982 through 1996 have been most frequently to "Direct Quotations" (courts including a direct quotation from a secondary source). See Tables 15A and 15B. Of the "Direct Quotations" cites, well over 50% were of a definitional quality. Citing to *Am. Jur. 2d* in that capacity is probably pardonable. It is troubling however, that so many cites to *Am. Jur. 2d* have been under the category of "sole authority" to support a point. The Kansas Supreme Court cited to *Am. Jur. 2d* as "sole authority" 242 times over the 15-year period and the Kansas Court of Appeals cited to *Am. Jur. 2d* as "sole authority" 186 times during the same period.

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.

E. Corpus Juris Secundum

For the reasons stated above, courts should also resist citing to another legal encyclopedia - *Corpus Juris Secundum* (*CJS*). As you can see from Tables 16A and 16B, *CJS* is not cited to nearly as much as *Am. Jur. 2d*. The reason is speculative but there is a good chance it has to do with the age of the encyclopedias. The dates of the volumes in both sets vary quite a bit but *CJS* is on the average quite a bit older. Some *CJS* volumes date back to the early 1940's. Both of the encyclopedias are updated by pocket parts, but it is asking a great deal for a one-eighth inch pocket part to update an encyclopedia that dates back to the days of Adolf Hitler.

F. American Law Reports (ALRs)

As far as secondary sources are concerned, *ALRs* are being cited to at a decreasing rate. The Kansas Supreme Court and Kansas Court of Appeals cited to *ALRs* 193 times over the last five years of the 15-year study compared to 819 times in the first ten years of the 15-year study. See Tables 17A and 17B. *ALRs* are many times researched in order to provide a line of cases that cross jurisdictional boundaries. In the years from 1982 through 1996,

ALRs were used over 50% of the time by both the Kansas Supreme Court and the Kansas Court of Appeals as just "one of several authorities" to support a point. See Tables 17A and 17B. Comparatively *ALRs* were cited to less than *Am. Jur. 2d*. A reason for the lesser citing may be because the Kansas Courts rarely include direct quotations from *ALR*, whereas, the Kansas Courts frequently include direct quotations from *Am. Jur. 2d*. Another reason may be that *ALRs* have been considered more a case finder as opposed to an actual authority in itself to be cited.⁹

G. Treatises

As far as treatises are concerned, there is not a search that can be done on LEXIS or Westlaw to check for standard abbreviations. Treatise citation counts, therefore, as with the case and legislative and related authority citation counts are calculated by checking the text of the selected cases from the sample years, as was done in the years 1935, 1965 and 1995. It is useful to see which treatises the courts have cited to even if on a selective basis. Treatises have been steadily cited to in Kansas over the sample years: 1935 Kansas Supreme Court (26 times); 1965 Kansas Supreme Court (28 times); 1995 Kansas Supreme Court (24 times) and the 1995 Kansas Court of Appeals (25 times). For a list of treatises that have been cited to more than once for the sample years see Table 19.

V. Citation and Policy Trends

What can we conclude from the tabulations in regard to policy-making and Kansas judges? Are the courts in Kansas practicing policy? A few items may be possible indica-

tors of judicial policy-making. The first possible indicator is the dissenting opinion. A judge may dissent for policy reasons, at least in part. An enormous premium in law is placed upon precedent and stare decisis. If past precedent is available, there should not be any present controversy. If that is the case, why are different conclusions drawn from the same precedent? The answer certainly may be that there is more than one interpretation to be given to a particular precedent. Or there may be conflicting precedents. Or possibly a judge may have a policy motivation based outside the confines of precedent. There were five dissenting opinions among the 100 studied cases from the 1935 Kansas Supreme Court. Nothing indicative of policy-making could be construed. There were 14 dissenting opinions among the 100 cases studied from the 1965 Kansas Supreme Court. There was a possible indicator of policy-making by the judges in these cases. There were five law review articles cited in the 14 dissenting cases. There were only eight law review articles cited for the 100 total cases studied in 1965. It has been stated that "law review citation rates may be a rough index of a court's orientation toward an overt policy-making role."¹⁰ In 1995, there were nine dissenting opinions. There was not one law review article, however, among the nine dissenting opinions. Thus, if the Supreme Court in 1965 was attempting to structure policy through using law review articles in dissenting opinions, they gave up the practice by 1995. It should be noted that among the nine dissenting opinions, there was one dissenting opinion that discussed policy considerations in regard to the exclusionary rule and its use under Kansas law.¹¹ There were only three dissenting opinions in

the 100 cases studied from the 1995 Kansas Court of Appeals. There were no law review articles cited in the three dissenting opinions.

Another possible policy-oriented indicator is the Amicus Curie Brief:

[S]cholars posit that amicus briefs filed by organized interests on certiorari [petition for review in Kansas] reduce . . . uncertainty as about the importance of cases in other words, these briefs signal the presence of a significant case, thereby increasing the likelihood that the court hear it.¹²

The 1995 Kansas Supreme Court cited to amicus curie briefs 14 times. Accordingly, this court may be seeking to consider policy in its rule making. No other court in any of the other sample years cited to amicus curie briefs.

It has long been established by the United States Supreme Court that cases cannot be settled in a vacuum. "We take judicial cognizance of all matters of general knowledge."¹³ The United States Supreme Court has been a policy-making body for quite some time.¹⁴ They are arbiters of value in addition to being arbiters of fact. Reading the decision *Brown v. Board of Education*, 347 U.S. 483 (1954), which considered many nonlegal social factors undeniably brings this fact home. In addition to the United States Supreme Court being a policy-making body, it has been suggested that some of the larger states' courts-of-last-resort have an innovative policy-making role.¹⁵

In Kansas, despite the presence of some possible policy-making indicators, there appears to be a reluctance to address public policy considerations. For example, the Kansas Supreme Court felt the public policy

question of imposing liability on alcohol vendors who sold to intoxicated patrons was clearly a legislative function despite the fact that other state courts have resolved the issue.¹⁶ In another example, the Kansas Supreme Court stated: "[W]e are of the firm conviction that from the standpoint of some public policy the creation of new rights of action in the field of alienation of affections is a question for the consideration and determination of the legislature and is a function which this court should not usurp."¹⁷

As stated above, if there is a policy-making court in Kansas it would probably be the Kansas Supreme Court. However, it appears the Kansas Supreme Court does not, at least openly, welcome or accept the role of policy-maker.

Notes

The author wishes to give a special thanks to Katherine Greene, his assistant for her incredible work in manually tabulating the sample years of 1935, 1965, and 1995. He wishes to thank Mauricio Uribe for his good work on this project. He wishes to thank Gale Troth for her great help in preparing this article and for her work on the tables. He is also grateful to Fritz Snyder, Law Library Director and Professor of Law, University of Montana School of Law and Peter C. Schanck, Law Library Director and Professor of Law at Marquette University for reading the manuscript and offering their encouragement and thoughtful suggestions.

1. There are a number of citation studies. The articles

that had the most impact on my study are: John Henry Merryman, *Toward A Theory of Citations: An Empirical Study of the Citation Practice of the California Supreme court in 1950, 1960, and 1970*, 50 S. CAL. L. REV. 381 (1977); Richard A. Mann, *The North Carolina Supreme Court 1977: A Statistical Analysis*, 15 WAKE FOREST L. REV. 39 (1979); Lawrence M. Friedman et al., *State Supreme Courts: A Century of Style and Citations*, 33 STAN. L. REV. 773 (1981); Wes Daniels, *Far Beyond the Law Reports: Secondary Source Citations in United States Supreme Court Opinions October Terms 1900, 1940, and 1978*, 76 L. LIBR. J. 1 (1983); Charles A. Johnson, *Citations to Authority in Supreme Court Opinions*, 7 LAW & POL'Y 509 (1985); Richard A. Mann, *The Use of Legal Periodicals by Courts and Journals*, 26 JURIMETRICS J. 400 (1986); 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); James Leonard, *An Analysis of Citations to Authority in Ohio Appellate Decisions Published in 1990*, 86 L. LIBR. J. 129 (1994); William H. Manz, *The Citation Practices of the New York Court of Appeals, 1850-1993*, 43 BUFF.L.REV. 121 (1995); Fritz Snyder, *The Citation Practices of the Montana Supreme Court*, 57 MONT. L. REV. 455 (1996).

2. See Leonard, *supra* note 1, at 138; Snyder, *supra* note 1, at 461; Merryman, *supra* note 1, at 399.

In the sample years of 1935, 1965 and 1995, only cases published in the official Kansas reporters were analyzed. In the 15 year study of secondary sources (1982-1996) there was a much larger pool of Kansas cases analyzed. The pool of cases included cases not only from the official state reports but also Kansas cases published electronically on LEXIS. Adding the unpublished cases to the 15 year study added simultaneously to the number of citations being analyzed and number of secondary sources being cited. Note, there is a no-citation rule in Kansas stating that unpublished Kansas Appellate cases have no value as precedent..."except to support a claim of res judicata, collateral estoppel, or law of the case." KAN. S. CT. R. 7.04. Therefore, while the unpublished cases are not cited many times as precedent in Kansas, they still can be used by attorneys in analyzing the law and in counseling their clients.

3. Snyder, *supra* note 1, at 464-65.

4. Manz, *supra* note 1, at 131.

5. Merryman, *supra* note 2, at 398.

6. Sirico and Drew, *supra* note 1, at 1053.
7. See ROBERT C. BERRING, FINDING THE LAW 290 (10th ed. 1995).
8. See J. MYRON JACOBSTEIN, FUNDAMENTALS OF LEGAL RESEARCH 361 (6th ed. 1994).
9. See Snyder, *supra* note 1, at 473.
10. Friedman et al., *supra* note 1, at 815.
11. See State v. Turner, 257 Kan. 19, 28-29, 891 P.2d 317 (1995).
12. LEE EPSTEIN & JACK KNIGHT, THE CHOICES JUDGES MAKE 46 (1998).
13. Muller v. Oregon, 208 U.S. 412, 421 (1908).
14. See EPSTEIN & KNIGHT, *supra* note 8, at 23.
15. See Friedman et al., *supra* note 1, at 815.
16. See Ling v. Jan's Liquors, 237 Kan. 629, 640, 703 P.2d 731 (1985).
17. Whitcomb v. Whitcomb, 180 Kan. 340, 343-44, 304 P.2d 465 (1956).

TABLE 1
Kansas Supreme Court, 1995, 1965 and 1935
and Kansas Court of Appeals, 1995
Citation by Authority Type

	1995 Ct. Of Appeals	1995 KS Supreme Ct.	1965 KS Supreme Ct.	1935 KS Supreme Ct.
Judicial Opinions	68.5%	69.1%	68.1%	63.8%
Legislation and Related Authorities	28.7%	28.9%	23.1%	20.9%
Secondary Sources	2.8%	2.0%	8.8%	15.3%

TABLE 2
Kansas Supreme Court and Kansas Court of Appeals
Disposed Opinions Per Year

	Kansas Supreme Ct.	Kansas Court of Appeals	Total
1996	210	1523	1733
1995	200	1330	1530
1994	213	1156	1369
1993	208	1129	1336
1992	198	1017	1215
1991	210	903	1113
1990	205	931	1136
1989	213	921	1134
1988	371	922	1293
1987	246	741	987
1986	248	842	1090
1985	293	639	932
1984	270	638	908
1983	299	609	908
1982	303	677	980
1981	178	769	947
1980	263	445	708
1979	262	437	669
1978	305	358	663
1977	251	224	475

TABLE 3

Kansas Supreme Court and Kansas Court of Appeals

Disposed Opinions. Published v. Unpublished

	KS Sup. Ct. Published Opinions	KS Sup. Ct. Unpublished Opinions	KS Ct. Of Appeals Published Opinions	KS Ct. Of Appeals Unpublished Opinions
1996	152	58	168	1355
1995	166	34	178	1152
1994	176	37	151	1005



TABLE 4
Kansas Supreme Court and Kansas Court of Appeals
Cites to Judicial Opinions

Court Cited	KS Ct. Of Appeals 1995	KS Sup. Ct. 1995	KS Sup. Ct. 1965	KS Sup. Ct. 1935
Kansas Supreme Court Court of Appeals	72.2% 56.2% 16.0%	64.8% 59.4% 5.4%	73.7%	79.0%
Federal Supreme Court Court of Appeals District Courts	13.1% 6.3% 5.0% 1.8%	19.0% 10.6% 6.1% 2.3%	19.9%	6.5%
Other States Supreme Court Court of Appeals	13.6% 7.8% 5.8%	13.9% 9.0% 4.9%	5.8%	14.4%

TABLE 5
Case Citations to Other States

	1995 KS Ct. Of Appeals	1995 KS Supreme Ct.	1965 KS Supreme Ct.	1935 KS Supreme Ct.	Total
Ala.	5	8	1	4	18
Alaska	1	3			4
Arizona	6	10		1	17
Ark.	5	1		2	8
Cal.	28	25	7	6	66
Col.	11	10			21
Conn.	1	13	2	2	18
Del.	1	7	1	1	10
D.C.		1			1
Fla.	19	7	2	1	29
Geo.	7	10	1	4	22
Haw.	1	3			4
Ida.	2		2	2	6
Ill.	6	14	1	8	29
Ind.		4		3	7
Iowa	12	18		6	36
Ky.	2	2	2	9	15
La.	6	4	2		12
Me.	3	2		1	6
Md.	5	9		4	18
Mass.	10	8	3	2	23
Mich.	2	7	1	2	12
Minn.	22	7	1	2	32
Miss.	2				2
Mo.	12	1	6	5	24

	1995 KS Ct. Of Appeals	1995 KS Supreme Ct.	1965 KS Supreme Ct.	1935 KS Supreme Ct.	Total
Mont.	3	2	1		6
Neb.	6	3	1	3	13
Nev.	3				3
N.H.	1	1			2
N.J.	6	17	3	4	30
N.M.	2		1		3
N.Y.	18	30	11	7	66
N.C.	7	1		4	12
N.D.	1	1			2
Ohio	5	23	5	6	39
Okla.		11	4	7	22
Ore.	20	7	2	1	30
Pa.	3	13		2	18
R.I.	1			1	2
S.C.	1	7		2	10
S.D.	1	2			3
Tenn.	5	4			9
Tex.	8	12		2	22
Utah.	1	1	3		5
Vt.	1	1		1	3
Va.	6	2			8
Wash.	14	7	1		22
W. Va.	1	7	2	1	11
Wisc.	15	3	4	3	25
Wyo.	2			1	3
Total	298	329	70	110	807

TABLE 6
String Citations
Jurisdiction Tracking

# of Cites in String	1935 KS Supreme Ct. (100 Decisions)	1965 KS Supreme Ct. (100 Decisions)	1995 KS Supreme Ct. (100 Decisions)	1995 KS Ct. of App. (100 Decisions)	Totals
4	5	4	6	4	19
5	4	1	3	4	12
6	2	3	2	0	7
7	1	0	1	2	4
8	0	1	2	0	3
9 plus cites	1		3	0	4
Totals	13	9	17	10	49

Aesthetic

# of Cites in String	1935 KS Supreme Ct. (100 Decisions)	1965 KS Supreme Ct. (100 Decisions)	1995 KS Supreme Ct. (100 Decisions)	1995 KS Ct. of App. (100 Decisions)	Totals
4	5	22	6	5	38
5	2	3	6	2	13
6	1	3	2	1	7
7	0	1	0	0	1
8	0	1	1	0	2
9 plus cites	0	2	0	0	2
Totals	8	32	15	8	63

TABLE 7A
Age of Cases Cited by the
Kansas Supreme Court in 1995

	Number Cited	% Cited
Before 1950	119	4.7
1950-1959	43	1.7
1960-1969	106	4.3
1970-1979	358	14.4
1980-1989	759	30.4
1990-1995	1108	44.4
Total	2493	99.9

TABLE 7B
Age of Cases Cited by the
Kansas Court of Appeals in 1995

	Number Cited	% Cited
Before 1950	86	4.1
1950-1959	30	1.4
1960-1969	104	4.9
1970-1979	310	14.8
1980-1989	697	33.4
1990-1995	862	41.3
Total	2089	99.9

TABLE 8
 Kansas Supreme Court and Kansas Court of Appeals
 Citations to Legislative and
 Related Authorities

	KS Court of Appeals 1995	Kansas Supreme Ct. 1995	Kansas Supreme Ct. 1965	Kansas Supreme Ct. 1935
Kansas	89.1%	80.35%	81.9%	93.9%
Current	79.5%	63.9%	48.3%	65.9%
Statutory Code				
Superceded Code	1.0%	1.0%	1.8%	5.5%
Session Laws	1.0%	1.8%	7.7%	17.5%
Legislative Docs	.05%	.05%	5.6%	.05%
Regulations	1.0%	1.0%	1.0%	.05%
Procedural Rules (Crim/Civ)	.0%	.05%	1.3%	1.0%
Attorney General Opinions	.05%	.05%	.05%	0%
Constitution	1.2%	2.9%	8.7%	2.8%
Jury Instructions	1.0%	2.6%	.05%	0%
Supreme Court Rules	2.4%	1.8%	5.1%	1.0%
Municipal Ordinances	1.9%	1.0%	1.0%	0%
Ethics Rules	0%	4.2%	1.3%	0%
Federal	6.45%	16.4%	16.25%	2.6%
Current	2.2%	7.2%	3.6%	1.6%
Statutory Code				
Session Laws	.05%	1.0%	.05%	0%
Legislative Docs	.05%	1.0%	1.8%	0%
Regulations	.05%	1.9%	.05%	0%
Procedural Rules (Civ/Crim)	1.0%	1.0%	.05%	0%
Ethics	.05%	.05%	0%	0%
Constitution	3.0%	3.6%	10.7%	1.0%
Jury Instructions	0%	.05%	0%	0%
Uniform Laws Annotated	.05%	.05%	0%	0%
Other States	3.45%	3.05%	1.05%	2.9%
Current	3.4%	2.0%	1.0%	2.8%
Statutory Code				
Superceded	0%	0%	0%	0%
Constitution	.05%	1.0%	.05%	0%
Ethics	0%	.05%	0%	0%
Session Laws	0%	0%	0%	.05%
Municipal Ordinances	0%	0%	0%	.05%

TABLE 9
Kansas Supreme Court and Kansas Court of Appeals
Citations to Secondary Sources*

	KS. Ct. of Appeals	KS Supreme Ct. 1995	KS Supreme Ct. 1965	KS Supreme Ct. 1935
In State Law Reviews	5.5%	14.8%	1.0%	0
Out of State Law Reviews	3.3%	17.0%	4.5%	1.0%
Treatises	27.8%	27.3%	17.8%	2.2%
Encyclopedias	37.7%	18.2%	44.6%	64.1%
Restatements	10.0%	2.2%	1.0%	16.3%
ALR's	4.4%	3.4%	21.7%	11.4%
Dictionaries	4.4%	2.2%	1.3%	1.6%
Other	6.3%	14.8%	7.1%	2.7%

* Note that the percentages in Table 9 are based on the published opinions from the sample years.

TABLE 10A
Most Cited Legal Periodicals by Five Year Increments
(Kansas Supreme Court)

	1996-92	1991-87	1986-82	Total
Kansas Law Rev.	37	37	43	117
Washburn Law Rev.	24	26	36	86
Total	61	63	79	203
Calif. Law Rev.	0	2	8	10
Chicago Kent Law Rev.	0	2	2	4
Columbia Law Rev.	3	1	7	11
Cornell Law Rev.	1	1	3	5
DePaul Law Rev.	0	5	4	9
Duquense Law Rev.	3	1	1	5
Fordham Law Rev.	1	2	2	5
Fordham U. Law Jrl.	3	0	1	4
Harvard Law Rev.	9	4	9	22
Hastings Law Jrl.	0	2	4	6
Indiana Law Jrl.	2	0	4	6
Iowa Law Rev.	0	2	2	4
Michigan Law Rev.	2	4	2	8
Missouri Law Rev.	0	5	2	7
New York U. Law Rev.	0	5	2	7
North Dakota Law Jrl.	0	4	0	4
Northwestern Pacific	3	0	1	4
Syracuse Law Rev.	1	4	1	6
Texas Law Rev.	1	2	1	4
Texas Law Rev.	0	3	2	5
Univ. Of Pudget Sound	1	2	1	4
Utah Law Rev.	4	0	5	9
Univ. Of Chicago	4	3	1	8
Virginia Law Rev.	3	4	5	12
Washington and Lee	2	3	0	5
Yale	7	2	4	13

TABLE 10B
Most Cited Legal Periodicals by Five Year Increments
(Kansas Court of Appeals)

	1996-92	1991-87	1986-82	Total
Kansas Law Rev.	23	48	18	89
Washburn	9	21	13	43
Totals	32	69	31	132
Columbia Law Rev.	0	4	2	6
Harvard Law Rev.	5	10	3	18
Michigan Law Rev.	0	4	1	5
New York U. Law Rev.	0	0	4	4
Oklahoma Law Rev.	4	0	0	4
Tennessee Law Review	0	4	0	4
U. Of Chicago	4	0	1	5
Washington Law Rev.	0	5	0	5
Yale	7	1	2	10

TABLE 11A
Citation Recency of Law Review Articles
(Kansas Supreme Court)

	0-5 Years	6-10 Years	11-15 Years	16-20 Years	21-25 Years	26-30 Years	31 + Years	Totals
1996	9	1	10	1	2	2	1	26
1995	9	5	5	1	0	1	5	26
1994	12	2	13	5	5	0	0	37
1993	17	10	6	4	1	0	0	38
1992	3	3	6	1	1	3	1	18
1991	11	6	3	1	2	0	2	25
1990	10	18	7	5	2	4	1	47
1989	17	9	4	1	0	0	0	31
1988	9	5	8	4	1	0	4	31
1987	7	8	10	1	4	1	1	32
1986	9	11	5	2	1	0	1	29
1985	19	6	2	1	0	0	0	28
1984	24	7	11	11	2	0	1	56
1983	17	12	2	1	1	0	1	34
1982	31	15	1	3	0	1	1	52
Totals	204	118	93	42	22	12	19	510

TABLE 11B
Citation Recency of Law Review Articles
(Kansas Court of Appeals)

	0-5 Years	6-10 Years	11-15 Years	16-20 Years	21-25 Years	26-30 Years	31 + Years	Totals
1996	7	6	0	0	1	0	0	14
1995	1	3	4	3	0	0	1	12
1994	2	2	1	0	1	5	5	16
1993	7	3	4	0	0	0	0	14
1992	8	3	5	2	0	2	0	20
1991	5	2	1	1	2	4	1	16
1990	4	4	3	1	0	4	6	22
1989	10	10	4	1	2	3	1	31
1988	12	9	5	4	3	0	2	35
1987	3	2	4	0	1	1	0	11
1986	3	1	1	0	0	0	0	5
1985	15	4	4	0	1	1	1	26
1984	2	1	4	0	0	0	1	8
1983	2	0	2	0	0	1	0	5
1982	7	5	0	0	0	1	1	14
Totals	88	55	42	12	11	22	19	249

TABLE 12A
Citations to the Restatements
(Kansas Supreme Court)

	1992-1996	1987-1991	1982-1986	Totals
Agency	6	3	5	14
Conflicts	6	5	1	12
Contracts	7	10	15	32
Judgements	0	0	9	9
Property	2	2	7	11
Restitution	2	3	0	5
Security	0	7	1	8
Torts	104	98	118	320
Trusts	19	13	4	36
Totals	146	141	160	447

TABLE 12B
Citations to the Restatements
(Kansas Court of Appeals)

	1992-1996	1987-1991	1982-1986	Totals
Agency	0	6	0	6
Conflicts	1	2	7	10
Contracts	16	43	14	73
Judgements	2	6	2	10
Property	4	6	0	10
Restitution	2	3	1	6
Security	1	3	1	5
Torts	74	52	54	180
Trusts	11	5	3	19
Totals	111	126	82	319

TABLE 13A
Citations to Law Reviews
(Kansas Supreme Court)

	Direct Quote	One of Several Authorities	Sole Authority	Totals
1992-1996	49	25	71	145
1987-1991	28	53	85	166
1982-1986	44	96	59	199
Totals	121	182	215	510

TABLE 13B
Citations to Law Reviews
(Kansas Court of Appeals)

	Direct Quote	One of Several Authorities	Sole Authority	Totals
1992-1996	20	13	43	76
1987-1991	31	34	50	115
1982-1986	14	18	26	58
Totals	65	65	119	249

TABLE 14A
Citations to Restatements
(Kansas Supreme Court)

	Direct Quote	One of Several Authorities	Sole Authority	Totals
1992-1996	42	31	73	146
1987-1991	57	27	57	141
1982-1986	73	35	52	160
Totals	172	93	182	447

TABLE 14B
Citations to Restatements
(Kansas Court of Appeals)

	Direct Quote	One of Several Authorities	Sole Authority	Totals
1992-1996	38	37	36	111
1987-1991	69	23	34	126
1982-1986	29	34	19	82
Totals	136	94	89	319

TABLE 15A
Citations to Am. Jur. 2d
(Kansas Supreme Court)

	Direct Quote	One of Several Authorities	Sole Authority	Total
1992-1996	49	38	29	116
1987-1991	73	53	93	219
1982-1986	127	141	120	388
Totals	249	232	242	723

TABLE 15B
Citations to Am. Jur. 2d
(Kansas Court of Appeals)

	Direct Quote	One of Several Authorities	Sole Authority	Total
1992-1996	70	37	44	151
1987-1991	102	70	83	255
1982-1986	68	110	59	237
Totals	240	217	186	643

TABLE 16A
Citations to Corpus Juris Secundum
(Kansas Supreme Court)

	Direct Quote	One of Several Authorities	Sole Authority	Totals
1992-1996	23	7	16	46
1987-1991	33	30	29	92
1982-1986	52	62	45	159
Totals	108	99	90	297

TABLE 16B
Citations to Corpus Juris Secundum
(Kansas Court of Appeals)

	Direct Quote	One of Several Authorities	Sole Authority	Totals
1992-1996	22	11	5	38
1987-1991	42	22	25	89
1982-1986	50	59	28	137
Totals	114	92	58	264

TABLE 17A
Citations to ALR
(Kansas Supreme Court)

	Direct Quote	One of Several Authorities	Sole Authority	Totals
1992-1996	19	45	32	96
1987-1991	14	74	56	144
1982-1986	11	103	43	157
Totals	44	222	131	397

TABLE 17B
Citations to ALR
(Kansas Court of Appeals)

	Direct Quote	One of Several Authorities	Sole Authority	Totals
1992-1996	13	31	53	97
1987-1991	14	81	69	164
1982-1986	13	200	141	354
Totals	40	312	263	615

TABLE 18A
Citations to Secondary Authority*
15 Year Period (1982-1996)
(Kansas Supreme Court)

	1992-1996	1987-1991	1982-1986	Totals
Am. Jur. 2d	21.1%	28.7%	36.5%	30.5%
C.J.S	8.4%	12.1%	14.9%	12.5%
A.L.R.	17.5%	18.9%	14.8%	16.7%
Restatement	26.6%	18.5%	15.1%	18.8%
Law Reviews	26.4%	21.8%	18.7%	21.5%

TABLE 18B
Citations to Secondary Authority*
15 Year Period (1982-1996)
(Kansas Court of Appeals)

	1992-1996	1987-1991	1982-1986	Totals
Am. Jur. 2d	31.9%	34.0%	27.3%	30.8%
C.J.S	8.0%	11.9%	15.8%	12.6%
A.L.R.	20.5%	21.9%	40.8%	29.4%
Restatement	23.5%	16.8%	9.4%	15.3%
Law Reviews	16.1%	15.4%	6.7%	11.9%

* Including citation to unpublished as well as published opinions in the official Kansas Reports and Kansas Court of Appeals Reports.

TABLE 19

Treatise cited to more than once for each sample year.

1935 Kansas Supreme Court

1. Black on Interpretation of Laws, 2d ed. (3 times cited).
2. Couch Cyclopedia of Insurance Law (3 times cited).
3. Harper on Torts (2 times cited).

1965 Kansas Supreme Court

1. Wigmore on Evidence (4 times cited).

1995 Kansas Supreme Court

1. McQuillan, Municipal Corporations 3d ed. (2 times cited).
2. Wright and Miller, Federal Practice and Procedure (4 times cited).

1995 Kansas Court of Appeals

1. Wright and Miller, Federal Practice and Procedure (4 times cited).
2. Larson, Workers Compensation Law (4 times cited).
3. Perkins, Criminal Law (2 times cited).
4. Pierce, Oil and Gas Handbook (2 times cited).
5. Wharton's Criminal Law, (5 times cited).