

**TEXAS CITATION WRIT LARGE: “TYRANNY OF THE
INCONSEQUENTIAL” OR ESSENTIAL PERSUASIVE TOOL?**

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State Bar of Texas CLE
EXCEPTIONAL LEGAL WRITING
April 26, 2013
Austin

CHAPTER 5

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PROFESSIONAL BACKGROUND

Attorney at Law: DAVIDSON TROILO REAM & GARZA, PC; Civil appellate and commercial litigation, Austin

Austin Managing

Attorney: GRIFFITH NIXON DAVISON, PC; Appellate, commercial, and construction litigation; Austin

Associate: WINSTEAD SECHREST MINICK PC; Appellate and environmental practice groups; Austin

Briefing Attorney: SUPREME COURT OF TEXAS; Hon. Nathan L. Hecht, Senior Associate Justice; Austin

EDUCATION

Texas Tech University School of Law; J.D. (2003)

Editor in Chief: *Texas Tech Administrative Law Journal*

[CALI Award Recipient](#): Public Land Law (awarded for highest grade earned in course)

Texas Tech University Jerry S. Rawls College of Business Administration; M.B.A. (2003)

Texas Tech University College of Agricultural Sciences and Natural Resources; B.S. (1999)

Wildlife and Fisheries Management, Summa Cum Laude

Highest Ranking Graduate: College of Agricultural Sciences and Natural Resources

Outstanding Student: College of Agricultural Sciences and Natural Resources

President: Texas Tech University Chapter, The Wildlife Society

LICENSES & CERTIFICATIONS

Licenses

Texas (Nov. 2003); [U.S. Supreme Court](#) (May 2010); [Fifth Circuit Court of Appeals](#) (May 2007); U.S. District Court for the [Western District of Texas](#) (Jan. 2011); U.S. District Court for the [Eastern District of Texas](#) (Jan. 2011); U.S. District Court for the [Southern District of Texas](#) (Mar. 2009); U.S. District Court for the [Northern District of Texas](#) (Feb. 2007)

Certifications

Associate Wildlife Biologist (Dec. 1999-2009)

PROFESSIONAL RECOGNITION

Supreme Court of Texas

Cited in *Edwards Aquifer Auth. v. Day*, 369 S.W.3d 814, 825 n.47 (Tex. 2012)

Featured in the [2004-05 clerkship brochure](#)

Super Lawyers® Rising Star (appellate practice)

Texas Monthly, Law & Politics & Thomson Reuters (2009, 2010, 2011, 2012, 2013 (forthcoming))

Martindale-Hubbell®

[AV Peer-Review™ rated](#) (2012 to present)

College of the State Bar

Member (2005 to present)

Superb Rating (10 out of 10)

Avvo (2009 to present)

Texas Bar Journal

Featured: [Weblinks](#), 71 Tex. B.J. 364 (May 2008) (alongside Mani Walia)

Clerkship Notification Blog (<http://lawschoolclerkship.blogspot.com/>)

Editor in Chief (2008-09, 2009-10, and 2010-11 clerkship seasons) (original clerkship information clearinghouse annually generating half a million page views; named to the *ABA Journal's* [2008 Blawg 100 List](#))

Texas Appellate Law Blog

Featured: Dylan Drummond, *Texas Supreme Court Orders & Opinion 5/11/07*, TEXAS APPELLATE LAW BLOG (May 11, 2007), <http://j.mp/uabxo2> (discussing the Texas Supreme Court's opinion in *F.P. Operating Partners, L.P. v. Dueñez*, 237 S.W.3d 680 (Tex. 2007))

Tex Parte Blog (online blog of the Texas Lawyer)

Featured: Dylan Drummond, *In 140 characters or less, would you choose law school again?*, TEX PARTE BLOG (May 29, 2012), <http://j.mp/JVNC92> (discussing whether, “if you had it to do over again, would you go to law school?”)

Featured: Dylan Drummond, *Can-do record at CCA*, TEX PARTE BLOG (Nov. 18, 2008), <http://j.mp/ukcbGe> (discussing the bitter canned-food drive rivalry between the clerkship ranks of the Texas Supreme Court and Court of Criminal Appeals)

PROFESSIONAL LEADERSHIP

State Bar of Texas

Standing Committee on Pattern Jury Charges—Business, Consumer, Insurance & Employment

Member (2011-14); Assisted in drafting the “Preservation of Charge Error” comment included in all 2012 volumes; Co-Chair, Misappropriation of Trade Secrets Charge Drafting Subcommittee

Appellate Section

Section councilmember (2013-15); *Appellate Advocate*, Co-Editor (2009-12; Vols. 22-24); Assistant Editor (2006-09; Vols. 19-21)

Pro Bono Pilot Program—represented two clients in the Dallas and Fort Worth Courts of Appeals

Administrative & Public Law Section

Secretary (2007-08); Treasurer (2006-07); Advanced Administrative Law Course Planning Committee (2012, 2004-05); Advanced Texas Administrative Law Seminar Planning Committee (2006-10); Mack Kidd Administrative Law Moot Court Competition—Bench Brief Author (2006); Bench Brief Judge (2006-08)

Texas Bar Foundation

[Fellow](#) (2012 to present)

Texas Supreme Court Historical Society

[Trustee](#) (2012-14); Deputy Executive Editor, *Journal of the Texas Supreme Court Historical Society* (2011 to present)

PUBLICATIONS AND PRESENTATIONS**The Appellate Advocate**

Lead Author: Dylan O. Drummond & LaDawn H. Conway, [Preservation of Charge Error: The Pattern Jury Charge Committee Wades into the Fray](#), 25 APP. ADVOC. 11 (Fall 2012)

Lead Author: Dylan O. Drummond & Lisa Bowlin Hobbs, [In Defense of Confidential Votes on Petitions for Review at the Texas Supreme Court](#), 23 APP. ADVOC. 34 (Fall 2010)

Author: Dylan O. Drummond, [Citation Writ Large](#), 20 APP. ADVOC. 89 (Winter 2007), cited in *Gonzalez v. Texas*, No. 13-07-00270-CR, 2009 Tex. App. LEXIS 5860 at *12 n.2 (Tex. App.—Corpus Christi July 30, 2009, no pet.) (mem. op.); *Tex. S. Rentals, Inc. v. Gomez*, 267 S.W.3d 228, 239 n.8 (Tex. App.—Corpus Christi 2008, no pet.); Andrew T. Solomon, *Practitioners Beware: Under Amended Trap 47, “Unpublished” Memorandum Opinions in Civil Cases are Binding and Research on Westlaw and Lexis is a Necessity*, 40 ST. MARY’S L.J. 693, 702 n.34 (2009)

Author: Dylan O. Drummond, [A Vote By Any Other Name: The \(Abbreviated\) History of the Dissent from Denial of Review at the Texas Supreme Court](#), APP. ADVOC., Spring 2006, at 8 (recommended by former Texas Supreme Court Chief Justice Joe Greenhill to the Texas Supreme Court Historical Society), cited in *Supreme Court of Texas Blog, On Dissents from the Denial of Review*, <http://www.scotxblog.com/practice-notes/on-dissents-from-the-denial-of-review/>, at n.2 (last visited July 1, 2009)

Texas Institute of Continuing Legal Education

Author & Speaker: Dylan O. Drummond, *The Successful Preparation and Use of Construction Experts*, in *Texas Institute of Continuing Legal Education, The Basic Course in Texas Construction Law* ch. 9 (2012)

The Houston Lawyer

Author: Dylan O. Drummond, [Bridging the Gulf Between the Texas and Federal Arbitration Acts: S.B. 1650 Ends Simultaneous Mandamus and Interlocutory Appellate Proceedings in Texas](#), 47 HOUSTON LAW. 44 (Sept./Oct. 2009)

Author: Dylan O. Drummond, [What Constitutes the Last Word after Chemical Lime: the Mandate or the Judgment?](#), 47 HOUSTON LAW. 56 (Sept./Oct. 2009)

Journal of the Texas Supreme Court Historical Society

Author: Dylan O. Drummond, [South Western Reporter Factoids](#), J. TEX. SUP. CT. HIST. SOC’Y., Spring 2012, at 27

2012 NALP Annual Education Conference & Resource Center Exhibition

Panelist: *We Want You (In Our Network)*

State Bar of Texas CLE Programs

Author & Speaker: Dylan O. Drummond, [Catch-2260: Suits Against the State Under Government Code Chapter 2260](#), in *State Bar of Tex. Prof. Dev. Program, 24th Annual Advanced Administrative Law Course* ch. 10 (2012)

Lead Author: Dylan O. Drummond & Larry Temple, [Traps for the Unwary Administrative Lawyer](#), in *State Bar of Tex. Prof. Dev. Program, 17th Annual Advanced Administrative Law Course* ch. 11 (2005)

Texas Bar Journal

Contributor: [Party Talk 2011](#), 74 TEX. B.J. 998, 1000 (December 2011)

Texas Lawyer

Author: Dylan O. Drummond, [Workers’ Comp. Whirlwind](#), TEX. LAW. Dec. 19, 2005, at 36

Texas Senate Natural Resources Committee (82d Legislative Session)

Public Witness: Testified in favor of S.B. 332 concerning groundwater law (Mar. 1, 2011)

115th Texas State Historical Association Annual Meeting

Author & Speaker: Dylan O. Drummond, [Texas Groundwater Rights and Immunities: From East to Siproiano and Beyond](#), in *Joint Session with the Texas Supreme Court Historical Society, 115th Tex. St. Hist. Ass’n Ann. Meeting* (2011) (presented alongside Hon. Nathan L. Hecht and Prof. Megan Benson)

Texas Tech Administrative Law Journal

Author: Dylan O. Drummond, [Catch-2260: Suits Against the State Under Government Code Chapter 2260](#), 14 TEX. TECH ADMIN. L.J. 93 (Fall 2012)

Author: Dylan O. Drummond, Comment, [Texas Groundwater Law in the 21st Century: A Compendium of Historical Approaches, Current Problems, and Future Solutions Focusing on the High Plains Aquifer and the Panhandle](#), 4 TEX. TECH ADMIN. L.J. 173 (Summer 2003), cited in the *St. Mary’s and Duke Law Journals*, and the *Arkansas and Texas Law Reviews*

Texas Tech Law Review

Lead Author: Dylan O. Drummond, Lynn Ray Sherman, and Edmond J. McCarthy, Jr., [The Rule of Capture—Still So Misunderstood After All These Years](#), 37 TEX. TECH L. REV. 1 (Winter 2004) (awarded the outstanding lead article in volume 37, see *Laurels*, 68 TEX. B.J. 873, 873 (Oct. 2005), cited in *Edwards Aquifer Auth. v. Day*, No. 08-0964, 55 Tex. Sup. Ct. J. 343 n.47 (Tex. 2012); also cited in briefing to the Texas Supreme Court in *Edwards Aquifer Auth. v. Day*, No. 08-0964, three times in *City of Del Rio v. Clayton Sam Colt Hamilton Trust*, No. 08-0755, and four times in *Guitar Holding Co., L.P. v. Hudspeth County Underground Water Conservation Dist. No. 1*, No. 06-0904, 263 S.W.3d 910 (Tex. 2008); the *Baylor, Houston, Louisiana, Vermont and West Virginia Law Reviews* and the *St. Mary’s Law Journal*)

University of Texas CLE Programs

Author & Speaker: Dylan O. Drummond, [Groundwater Ownership in Place: Fact or Fiction?](#), in UTCLE, *Texas Water Law Institute* (2008) (cited in briefing to the Texas Supreme Court in *Amicus Curiae Brief of Texas Landowners Council* at 8, 9, *Edwards Aquifer Auth. v. Day*, No. 08-0964 (received Feb. 12, 2010); Respondent’s Brief on the Merits at ii, *City of Del Rio v. Clayton Sam Colt Hamilton Trust*, No. 08-0755 (filed June 30, 2009))

CIVIC INVOLVEMENT**Legal Aid Volunteer**

FEMA Bastrop Disaster Relief Center (Sept. 2011)

Red Cross Dorm Floor Manager

Austin Convention Center Shelter for Hurricane Katrina Evacuees (Aug.-Sept. 2005)

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TEXAS CITATION WRIT LARGE: “TYRANNY OF THE INCONSEQUENTIAL” OR ESSENTIAL PERSUASIVE TOOL?

I. WHY SHOULD ANYONE CARE ABOUT CITATION?¹

As former Philadelphia 76er Allen Iverson once famously and indelibly described more than a decade ago his slight regard for basketball practice,² most attorneys similarly feel towards citation:

We’re sitting here, and I’m supposed to be the [Super Lawyer®], and we’re in here talking about [*citation*].

I mean, listen, we’re talking about [*citation*], not a [trial], not a[n oral argument], not [voire dire], we’re talking about [*citation*].

Not a [contested-case hearing]. Not the [legal system] that I go out there and die for and [try every case] like it’s my last, not the [opening or closing statements], we’re talking about [*citation*] man.

I mean, how silly is that?³

So silly, in fact, that University of Texas School of Law Professor Wayne Schiess has dubbed such strict adherence to proper citation form—particularly if it is clung to wholly apart from the underlying merits of the legal argument

being made—the “tyranny of the inconsequential.”⁴

And he’s absolutely right. Yet accurate citation is also and almost paradoxically an essential persuasive arrow in a legal writer’s quiver. Because here in Texas, incorrect citation can not only make you look intellectually fatuous—even when you’re not—it can also result in the precedential denudation of an improperly cited case.

Consequently, accurate citation is something more than the pedant cherry atop an otherwise cogent legal argument, it is instead one of the buttressing foundations of establishing both an author’s credibility to his audience as well as a basic demonstration of one’s elemental understanding of persuasive writing.

II. THE TYRANNY OF PROPER CITATION⁵

Mastering the arcana of citation forms . . . is not a productive use of judges’ or law clerks’ time. The purpose of citations is to assist researchers in identifying and finding the sources; a form of citation that will serve that end is sufficient. In addition, the form of citation should be consistent to avoid the appearance of lack of craftsmanship and care.⁶

As Professor Schiess has observed: this statement from the *Judicial Writing Manual* is undoubtedly accurate, but does not reflect the reality of the

¹ I would like to extend special thanks to the following colleagues, upon whose work I’ve brazenly plagiarized heavily relied: (1) University of Texas School of Law Professor [Wayne Schiess](#); (2) [Chad Baruch](#); and (3) [Bradley Clark](#).

Incidentally, Bradley holds the distinct if dating honor of publishing the first (and late) Texas-centric legal blog—the [Texas Law Blog](#)—waaay back in the internet dark ages circa 2003.

² ESPN, ORIGINAL ALLEN IVERSON PRACTICE RANT, <http://j.mp/10KE10C> (last visited Mar. 20, 2013).

³ D.J. Gallo, *Allen Iverson’s ‘practice’ rant: 10 years later*, ESPN PLAYBOOK: FANDOM (May 7, 2012, 9:53 AM), <http://j.mp/10KE7Wb> (emphasis added).

⁴ Wayne Schiess, *Citation Form: The Tyranny of the Inconsequential*, LEGALWRITING.NET BLOG BY WAYNE SCHIESS (Aug. 9, 2012), <http://j.mp/10KEhgh>.

⁵ Not only this heading, but portions of this article’s text are lifted wholesale from the defunct musings of an “itinerant shepherd with a penchant for blogging from the pasture,” whose now-dated “vaguely legally-tinged ode[s] to arcana” may still be found at <http://sophisticmiltonianserbonianblog.wordpress.com/>.

⁶ Wayne Schiess, *Citation form: The Tyranny of the Inconsequential*, LEGALWRITING.NET BLOG BY WAYNE SCHIESS (Aug. 9, 2012), <http://j.mp/10KEhgh> (quoting FEDERAL JUDICIAL CENTER, JUDICIAL WRITING MANUAL 24 (1991)).

scarlet hue that attaches to one marked by improper citation.⁷

Many lawyers, some judges, and most every law clerk “will judge you by your citation form, as inconsequential as it may be.”⁸ Often, a lawyer’s legal prose may be the only hallmark by which court staff know an attorney, and the sole measure by which a lawyer is judged in the back halls of the courthouse.⁹ In some instances, even courts resort to citational “benchslapping”¹⁰ of one another.¹¹

Of course, a legal writer must put forth a well-reasoned argument, but slovenly citation will invariably detract from the credibility otherwise established by compelling reasoning. Although good citation form may not—in and of itself—“win over many readers, poor form will assuredly put off those who prize accuracy.”¹²

⁷ *Id.*

⁸ *Id.*

⁹ Bradley B. Clark, *Yes, Judges Really Do Care About That! Lawyers’ Most Common Citation Mistakes*, 3, State Bar of Tex. Prof. Dev. Program, Consumer and Commercial Law Course (2007) [hereinafter *Judges Really Do Care About That!*].

¹⁰ See Article III Groupie (aka David Lat), *Bench-Slapped! Reinhardt v. O’Scannlain, UNDERNEATH THEIR ROBES* (June 24, 2004), <http://j.mp/10KEzDL> (describing the derivation and origination of the term, “bench-slap”); see also Debra Cassens Weiss, *Is ‘Benchslap’ Worthy of Black’s Law Dictionary? Editor Tweets Question*, ABA JOURNAL LAW NEWS NOW, (Dec 3, 2012 7:15 AM), <http://j.mp/10KEHDe> (recounting a discussion on Twitter between *Black’s Law Dictionary* Editor in Chief, Bryan Garner, and *Above the Law & Underneath Their Robes* founder, David Lat, regarding potential inclusion of the term in the 10th edition of *Black’s Law Dictionary*).

¹¹ See, e.g., *Thorne v. Jones*, 765 F.2d 1270, 1275 (5th Cir. 1985) (appending a “sic” notation to the U.S. Supreme Court’s citation of *one of its own* prior cases, merely because the High Court adhered to its own style guide instead of the *Bluebook*); James W. Paulsen, *An Uninformed System of Citation*, 105 HARV. L. REV. 1780, 1784 (May 1992) (book review) [hereinafter *Uninformed System*].

¹² Bryan A. Garner, *Foreword*, THE GREENBOOK: TEXAS RULES OF FORM iii (Texas Law Review Ass’n ed., 12th ed. 2010) [hereinafter *Garner Foreword*].

All too often, however, those who employ suspect citation tend to evidence similar diligence in their legal reasoning as well. Back many moons ago, when it was my job to read briefs submitted by others, it was a very rare occurrence indeed when a brief that jumped out at me as being offensively lax in its citation was inversely impressive for its thoughtful analysis. The converse was also true: rarely were briefs that shone with impeccable citation burdened by makeweight reasoning. Once you’ve lost credibility through incorrect citation, it’s difficult to regain it through unassailable logic. Ultimately, it is always best to try to avoid engendering snickering from one’s legal reader.

That said, oftentimes which *Bluebook* or *Greenbook* rule (or combination thereof) exactly applies to a given citation is not always clear. I remain convinced that, as long as you appear to generally have a clue as to how to cite something (i.e., it “looks right”), no briefing or staff attorney will hold it against you if your attempt isn’t strictly correct. They’re substantively checking your cites for—and judging your credibility based upon—the accuracy with which you cite the material relied upon, not the running tally of *Bluebook*¹³ or *Greenbook*¹⁴ rules of which you may have technically run afoul.¹⁵

¹³ THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass’n et al. eds., 19th ed. 2010) [hereinafter BLUEBOOK]. My references to the *Bluebook* throughout this article will be technically incorrect because I refuse to include a prefatory article in my references to a publication merely because it is included as part of its title.

¹⁴ THE GREENBOOK: TEXAS RULES OF FORM (Texas Law Review Ass’n ed., 12th ed. 2010) [hereinafter GREENBOOK]. See *supra* note 13 (explaining my obstinate refusal to include, “the,” in my reference to either the *Bluebook* or the *Greenbook*).

¹⁵ See, e.g., Hon. Richard A. Posner, *The Bluebook Blues*, 120 YALE L.J. 850, 852 (2011) [hereinafter *Bluebook Blues*] (a “system of citation forms has basically two functions: to provide enough information about a reference to give the reader a general idea of its significance and whether it’s worth looking up, and to enable the reader to find the reference if he decides that he does want to look it up”).

III. CITATION RESOURCES UPON WHICH TO RELY

The two main resources one should consult for all citation guidance in Texas are the *Bluebook* and the *Greenbook*. Both have been the primary citation guides in circulation,¹⁶ both nationally since 1926¹⁷ and in Texas since 1966.¹⁸ Also

¹⁶ As the current Dean of my legal alma mater documented, legal citation has been traced to Roman antiquity in 71 A.D., and the earliest-known citation manual, the *Modus Legendi Abbreviaturas in Utroque Iure*, was first published around 1475. A. Darby Dickerson, *An Un-Uniform System of Citation: Surviving with the New Bluebook (Including Compendia of State and Federal Court Rules Concerning Citation Form)*, 26 STETSON L. REV. 53, 58 n.13 (Fall 1996) [hereinafter *Un-Uniform System*] (citing Byron D. Cooper, *Anglo-American Legal Citation: Historical Development and Library Implications*, 75 L. LIBR. J. 3, 4, 20, 20 n.140 (1982)).

¹⁷ *Uninformed System*, 105 HARV. L. REV. at 1782. During the summer of 1926, a second-year law student at Harvard named Erwin Griswold had a printer in his hometown of Cleveland, Ohio prepare a 26-page style guide which “largely codified existing [citation] practices,” and expanded upon the 8-page internal manual used by *Harvard Law Review* editors—a manual that would later become known as the first “Bluebook.” A UNIFORM SYSTEM OF CITATION 1 (Harvard Law Review Ass’n ed., 1st ed. 1926); see also *Un-Uniform System*, 26 STETSON L. REV. at 55 n.1, 57 n.10. Compare *Uninformed System*, 105 HARV. L. REV. at 1782, 1782 n.14 (recounting the general history of the original edition of the *Bluebook*), with *Bluebook Blues*, 120 YALE L.J. at 854 (discussing the content of the 1st edition of the *Bluebook*, as well as revealing Judge Posner’s affinity of its strictures). Mr. Griswold went on to serve as Editor in Chief of the *Harvard Law Review*, Dean of Harvard Law School, and U.S. Solicitor General. *Un-Uniform System*, 26 STETSON L. REV. at 57 n.11.

Notably, the *Bluebook* did not attain its familiar cerulean cover until 1939, when its then-brown cladding was thought too reminiscent of Adolph Hitler’s “brownshirts.” Alan Strasser, *Technical Due Process?*, HARV. C.R.-C.L. L. REV. 507, 508 (1977). Sometime between the appearance of the cobalt-hued 6th edition in 1939, and the white-with-blue-trim-colored 11th edition was published in 1967, the moniker, “Bluebook,” attached to the legal vernacular—but did not adhere to the official title until the publication of the 15th edition in 1991. See *Un-Uniform System*, 26 STETSON L. REV. at 55 n.1, 58–59. Compare A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass’n et al. eds., 6th ed. 1939), with THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass’n et al. eds., 15th ed. 1991).

¹⁸ The original edition of the *Texas Rules of Form* was published in 1967. Telephone interview with Paul Goldman,

invaluable to legal writing in Texas is the *Manual on Usage and Style* (the “MUS”).¹⁹

Perhaps less well-known is that the *Bluebook* maintains an online “update” page, wherein various corrections to the current print edition are catalogued—presumably before incorporation into the 20th edition.²⁰ And there is also now a mobile app²¹ that is officially licensed by the *Bluebook* to use its content, called *rulebook*TM. It not only contains all the material from the printed 19th edition of the *Bluebook*, but seamlessly incorporates the interim updates from the

Texas Law Review Association, Publications Office (Mar. 25, 2013); see also TEXAS RULES OF FORM ii (Texas Law Review Ass’n ed., 1st ed. 1966). The earliest recorded reference I can find to the *Greenbook* in either caselaw or the literature is a mention of the 3d edition, published in 1974, in the 1977 Corpus Christi Court of Appeals’s case of *Cont’l Oil Co. v. Dobie*, 552 S.W.2d 183, 187 (Tex. Civ. App.—Corpus Christi 1977, writ ref’d n.r.e.).

Other notable Texas-centric citation guides include: (1) former Texas Supreme Court Chief Justice Joe Greenhill’s 1964 *Texas Bar Journal* article laying out *Uniform Citations for Briefs*; (2) former Texas Attorney General Crawford Martin’s 1967 *Uniform Citations for Opinions, Correspondence and Briefs* still on the shelves of the State Law Library; or (3) that institution’s first Director, Marian Oldfather Boner’s 1971 *Simplified Guide to Citation Forms*. Marian O. Boner, *Simplified Guide to Citation Forms* (Tarlton Law Library 1971) (it is my contention that Professor Boner has, to this day, one of the single coolest middle names ever placed on a Texas birth certificate); Hon. Crawford C. Martin, *Uniform Citations for Opinions, Correspondence and Briefs* (Office of the Attorney General 1967); Hon. Joe Greenhill, *Uniform Citations for Briefs: With Observations on the Meanings of the Stamps or Markings Used in Denying Writs of Error*, 27 TEX. B.J. 323 (May 1964).

¹⁹ THE MANUAL ON USAGE & STYLE (Texas Law Review Ass’n, ed., 12th ed. 2011) [hereinafter MUS].

²⁰ THE BLUEBOOK, UPDATES, <http://j.mp/10KES0Z> (last visited Mar. 21, 2013).

²¹ If you have to refer to this footnote to discover what a “mobile app” is, you probably won’t find apps of any kind useful in your practice. See, e.g., WIKIPEDIA, THE FREE ENCYCLOPEDIA, “MOBILE APP,” <http://j.mp/10KF000> (last visited Mar. 25, 2013) (“A mobile application (or mobile app) is a software application designed to run on smartphones, tablet computers and other mobile devices.”).

Bluebook's website as well.²² For this reason, as well as for its mobile (and stationary) utility, I highly recommend practitioners explore using the *Bluebook* mobile app in place of the printed edition.²³

There exists another national citation guide, the *ALWD Citation Manual* (the “*ALWD*”), but, from my vantage point,²⁴ it is as widely seen in Texas as a Yeti. In fact, I have yet to actually witness one opened or used in law school, on the editorial board of my law-school journal, during my clerkship, or in private practice—ever. Therefore, I do not recommend becoming overly familiar with its mandates for use in Texas practice.

This is not a comment upon its substantive merits, which colleagues more learned than I assure are many,²⁵ but merely a comment upon perhaps the most efficient way to spend your six-minute increments boning up on citation form.

²² Because the content of the *rulebook*[™] version of the *Bluebook* is technically different and updated from that contained in the 19th edition paper edition, I recommend citing it as follows: “THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass’n et al. eds., 19th ed. for *rulebook*[™] 2011).”

²³ For that matter, I also highly recommend the *Black’s Law Dictionary* app, which contains material from the 9th edition, and helpfully includes page number references as well for accurate citation. Incidentally, while the e-content in the iPhone version of *Black’s Law Dictionary* is identical to that in the 9th edition, I prefer to modify its citation slightly to denote the different source (as suggested by the app’s *Info* page): “BLACK’S LAW DICTIONARY (9th ed. for iPhone/iPad/iPod Touch 2011).”

²⁴ Which, admittedly, may be dated at this point.

²⁵ See, e.g., *Judges Really Do Care About That!* at 4–5 (noting that the *ALWD* has now been adopted by some 72 law schools—including the University of Texas School of Law and St. Mary’s University School of Law, as well as the Eleventh Circuit Court of Appeals); K.K. DuVivier, *The Scrivener: Modern Legal Writing: The Bluebook No. 18—“Thank God for competition . . .”*, COLO. LAW., Nov. 2005, at 112 [hereinafter *Bluebook No. 18*] (estimating the *ALWD*’s use by some 90 law schools); see also *ALWD CITATION MANUAL: A PROFESSIONAL SYSTEM OF CITATION* (Ass’n of Legal Writing Directors & Darby Dickerson, 4th ed. 2010) (Texas Tech University School of Law Dean Dickerson has served as the principal author of the *ALWD* since the 1st edition debuted in 2000).

IV. ALL THAT’S WRONG WITH THE GREENBOOK AND THE BLUEPAGES

One aspect of the debate regarding the efficacy of accurate legal citation that often goes unmentioned is that every major citation manual always seems to be changing—and often for no discernibly rational reason.

We’ve had 19 versions of the *Bluebook*,²⁶ and 12 apiece for the *Greenbook*²⁷ and *MUS*.²⁸ Invariably, a new edition will emerge from both the Ivy-League and bovine catacombs every other year or so, often dramatically altering some long-practiced citation form with little if any convincing explanation for the revision. This is one of the primary reasons the Texas bar as a whole tends to look somewhat derisively—the more so the longer one has been in practice—at the utility of staying current with whatever the newest citation fad may be. No doubt in part due to advancing age, I am now beginning to fall prey to this worldview as well.

The periodic revision of citational dogma has now resulted in the wholly unnecessary and duplicative creation of two separate citation regimes—one for legal periodicals and one for everything else. Because one system is hypertrophic enough²⁹—let alone two—I prefer to treat justices, judges, and court staff like adults (or at the very least, like 2L law students) and refuse in practice to cite sources differently than I would to academia.

²⁶ BLUEBOOK at iii.

²⁷ GREENBOOK at iv–v.

²⁸ MUS at i. Of note, the 2d edition of the *MUS* first appeared in 1967, the forward to which was penned by federal practice authority Charles Alan Wright. *Id.* at ix–x.

²⁹ *Bluebook Blues*, 120 YALE L.J. at 851 (describing the cottage-industry dominated by the *Bluebook* as “hypertroph[ic] in the anthropological sense,” because “[i]t is a monstrous growth, remote from the functional need for legal citation forms, that serves obscure needs of the legal culture and its student subculture”).

A. How Yet Another Citation Regime Came to Be

Beginning in earnest with the advent and apparent growing popularity of the *ALWD*, as well as the publication of the 18th edition of the *Bluebook*, a wave of “practitioner”-friendly alternative citation forms began to circulate widely in legal-writing circles, each of which were aimed at establishing a different paradigm of citation directives for practitioners’ legal documents (i.e., briefs, pleadings, memoranda, etc.).³⁰

The infancy of this endeavor originated in 1981, when the 13th edition of the *Bluebook* first included, on the inside of the front and back covers, alternative “Basic Citation Forms” for “Briefs and Memoranda.”³¹ By the 15th edition in 1991, these alternative citation forms were expanded into ten pages of “Practitioners’ Notes.”³²

The publication of the 18th edition of the *Bluebook* in 2005 brought the alternative-citation movement to full flower, wherein the *Bluebook* expanded fourfold the former 10-page “Practitioners’ Notes” into a 40-page section called the *Bluepages*.³³ In the current 19th edition,³⁴ the *Bluepages* now span some 48 pages.³⁵

³⁰ *Bluebook No. 18*, COLO. LAW., Nov. 2005, at 111-12.

³¹ *Id.* at 111. This quick-reference guide still exists in the 19th edition but is now reprinted on the inside back cover and facing page. BLUEBOOK at 512 (please note that page 512 doesn’t actually exist as the facing page to the inside back cover of the *Bluebook* has no page designation—but the flip side of that page is 511—hence page 512).

³² *Bluebook No. 18*, COLO. LAW., Nov. 2005, at 111.

³³ *Id.* at 112; see generally THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass’n et al. eds., 18th ed. 2005).

³⁴ Of which Judge Posner has expressed his desire to read all 511 pages in the 19th edition as approximating the famous dying words of the character from *Apocalypse Now*: “The horror ... the horror” *Bluebook Blues*, 120 YALE L.J. at 852 (quoting APOCALYPSE NOW (Zoetrope Studios 1979)).

³⁵ BLUEBOOK at 3-51.

B. Why Any of this Matters in Texas

The only reason why this exposition is remotely relevant to the art of modern-day citation is that, beginning with the 11th edition of the *Greenbook*, the student editors chose to revise the entirety of the *Greenbook*’s typographic conventions to comport not with the *Bluebook* itself but with its *Bluepages* instead.³⁶ In other words, since 2005, the entire *Greenbook* is now one big “*Greenpages*.”

One can (& I do) easily enough ignore the existence of the *Bluepages* when citing a given source and still technically be “correct” as per the 19th edition of the *Bluebook*. However, since 2005, if one does this here in Texas—citing a Texas source generally³⁷—your citation form may be understood to be incorrect by an exacting legal reader.

This is maddening because the entire reason for the existence of the *Bluepages* grew out of the difficulty many practitioners had in complying with the use of small caps, italics, and other typeface accents that—once upon a time—were difficult to apply. This is a kind way of saying that, when most word-processing was performed not on computers but on typewriters, italics and small caps were understandably problematic to use.³⁸ Hopefully, no one you know or practice with still prepares anything vaguely legal on any device without a power cord and a screen. Because the ease of applying these typefaces with any modern word-processing program has exponentially increased over the last 30 years, it is baffling why any legal writer would advocate for the use of

³⁶ TEXAS RULES OF FORM iv-v (Texas Law Review Ass’n ed., 11th ed. 2005).

³⁷ “Except as modified herein [the 12th edition of the *Greenbook*,] *The Bluebook* should be followed.”

³⁸ MATTHEW BUTTERICK, TYPOGRAPHY FOR LAWYERS: ESSENTIAL TOOLS FOR POLISHED & PERSUASIVE DOCUMENTS 41, 78 (Jones McClure Publ’g 2010) [hereinafter BUTTERICK] (examining how many common typeface and formatting practices are holdovers from the typewriter-era).

typographic conventions more appropriate to the industrial—instead of the internet—age.³⁹

I argue that, not only is the typeface variety long favored by the *Bluebook* not too terribly difficult to learn and employ effectively, it actually serves the purpose of citation in the first place, which is to aid the reader in their comprehension and evaluation of the authority you provide.

So, particularly now, it is all the more important to keenly adjudge your legal audience before deciding which citational route to take in the prose you submit for their review. Most if not every justice, judge, and attorney of moderately-recent vintage will likely assume the practitioners’ conventions followed by the *Greenbook* and the *Bluepages* are just flat-out wrong. However, younger lawyers and clerks especially—to whom most every judge I have ever known graciously and perhaps eagerly defer on matters of citation—may think your stubborn use of small caps and italics is not out-and-out incorrect per se, but perhaps just a sign of generational disconnect.

V. BASIC CITATION FORMS

At the outset, I will admit that many of the citation conventions I use personally and may even try to convince you to similarly utilize are no longer strictly correct after the changes wrought by the 11th edition of the *Greenbook*. So in such instances I will provide both my own preferred

³⁹ The *Bluepages* still list examples of case cites with underlined styles for goodness sake. See e.g., BLUEBOOK at 3–13; BUTTERICK at 78. One might as well attach a buggy whip as an exhibit to the pleading you submit as deign to underline a case style in public. See HON. ANTONIN SCALIA & BRYAN A. GARNER, MAKING YOUR CASE: THE ART OF PERSUADING JUDGES 136 (Thomson/West 2008) [hereinafter MAKING YOUR CASE] (quoting MARK P. PAINTER, THE LEGAL WRITER 35 (2002) (“I have seen firms spend hundreds of thousands of dollars on technology only to make their briefs and other documents look like they were typed on a 1940 Underwood”)); see also *Judges Really Do Care About That!* at 6; BUTTERICK at 78 (underlining is a “holdover from the typewriter age” when the “only way to emphasize text was to back up the carriage and type underscores beneath the text”).

citation form as well as the most current and accurate form—and why I think it is rubbish.

In addition, this article is not intended to provide a comprehensive republication of every citation form included in the *Bluebook* and *Greenbook*. Instead, presented below is a quick cheat-sheet of some of the most commonly relied upon civil sources here in Texas.⁴⁰

Finally, it is evident that, no matter what practices are discussed herein, in the *Bluebook*, the *Greenbook*, or any other citation manual, one should always investigate and follow whichever manual or whatever directives the local rules prescribe of the court in which briefing is to be submitted.⁴¹

A. Constitutions

U.S. CONST. amend. XIV⁴²

Tex. Const. art. I, § 17(a)⁴³

- But -

The more common and pre-11th-edition-of-the-*Greenbook* form would be ...

TEX. CONST. art. I, § 17(a)⁴⁴

B. Statutes

1. Federal

42 U.S.C. § 1983 (2012)⁴⁵

12 U.S.C.A. § 1426 (West 2010)⁴⁶

⁴⁰ For a better compendium of such citation forms, I recommend perusing the inside front covers and facing pages of both the *Bluebook* and the *Greenbook*, which contain quick-reference guides of common citations. See BLUEBOOK at i; GREENBOOK at i.

⁴¹ See MAKING YOUR CASE at 123.

⁴² BLUEBOOK at 110.

⁴³ GREENBOOK at 40.

⁴⁴ TEXAS RULES OF FORM 37 (Texas Law Review Ass’n ed., 10th ed. 2003) [hereinafter 10th GREENBOOK].

⁴⁵ BLUEBOOK at 112.

⁴⁶ *Id.*

- *But* -

Technically, the United States Code is only printed every six years (2000, 2006, 2012, etc.), so the *Bluebook* instructs to cite to the U.S.C.A. for any provision enacted subsequent to the latest edition of the U.S. Code. This is silly and profoundly antiquated. Either the law is a part of the current U.S. Code or it’s not. If you must include a date in your citation (& I don’t recommend doing so unless it is relevant), include whichever year is the most recent during which the cited statute was in force.

42 U.S.C. § 1983

12 U.S.C. § 1426

2. State

Tex. Water Code Ann. § 36.002(a)
(West 2011)⁴⁷

- *But* -

You’ll notice that the Texas Supreme Court rarely, if ever uses “Ann.,” “West,” or dates in statute citations within its opinions. This is because the Court’s⁴⁸ internal style guide directs judicial staff not to. The explanation given is that Texas law is not proprietary, and therefore providing attribution to a commercial reprinting service in a citation is unnecessary and—dare I say—slightly unseemly. Regarding omitting dates from Texas statute cites, the Court’s style guide instructs that dates should only be included if relevant to the analysis.

Indeed, the original reason for including a reference either to “Vernon” (now “West”) or “Supp.” was to indicate to the reader which bound or loose-leaf volume to pull from the shelves in which to check the accuracy of a

citation. Because virtually no one physically “shelf-checks” citations anymore, any substantive need for inclusion of this information has long since passed.

I tend to agree with the Court (particularly when briefing before it), therefore I never include, “Ann.,” “West,” or a date when citing Texas statutes in any forum. If I need to cite a historical provision, I’ll cite to a session law.

TEX. WATER CODE § 36.002(a)⁴⁹

C. Cases

1. Federal

PGA Tour, Inc. v. Martin, 532 U.S. 661 (2001)⁵⁰

Am. Airlines, Inc. v. Sabre, Inc., 694 F.3d 539 (5th Cir. 2012)⁵¹

United States v. Santos-Guevara, 406 F. App’x 874 (5th Cir. 2010) (per curiam)⁵²

Bradshaw v. Unity Marine Corp., 147 F. Supp. 2d 668 (S.D. Tex. 2001)⁵³

2. State

a. Texas Supreme Court

Texas A&M Univ.-Kingsville v. Moreno, No. 11-0469, 2013 WL 646380, at *1 (Tex. Feb. 22, 2013)⁵⁴

Edwards Aquifer Auth. v. Day, 369 S.W.3d 814 (Tex. 2012)⁵⁵

In re McAllen Med. Ctr., Inc., 275 S.W.3d 458 (Tex. 2008) (orig. proceeding)⁵⁶

⁴⁷ GREENBOOK at 42, 45.

⁴⁸ Fully cognizant that an article opining on correct citation should not itself appear to be ignorant of citational mandates, the author readily admits his provincial bias in insisting upon capitalizing references to the Texas Supreme Court and its Justices, even though such an upper-case honorarium is traditionally reserved only for references to the U.S. Supreme Court along with its Justices. *Contra* BLUEBOOK at 85; MUS, at 35.

⁴⁹ See, e.g., 10th GREENBOOK at 40.

⁵⁰ BLUEBOOK at 87, 89.

⁵¹ *Id.* at 87–88, 215–16.

⁵² See *id.* at 99, 215–16.

⁵³ *Id.* at 88, 217.

⁵⁴ GREENBOOK at 6–7.

⁵⁵ *Id.*

⁵⁶ *Id.* at 32.

Houston & Tex. Cent. Ry. Co. v. East,
81 S.W. 279 (Tex. 1904)⁵⁷

Lamar v. Houston (Tex. 1845), 65 TEX.
L. REV. 382 (Paulsen rep. 1986)⁵⁸

Rep. v. McCulloch, Dallam 357
(Tex. 1840)⁵⁹

- **But** -

The more common and pre-11th-edition-of-*the-Greenbook* form would be ...

Houston & Tex. Cent. Ry. Co. v. East,
98 Tex. 146, 81 S.W. 279 (1904)⁶⁰

b. Texas courts of appeals

Upton v. Brown, 960 S.W.2d 808
(Tex. App.—El Paso 1997, no pet.)⁶¹

In re *Ruiz*, 16 S.W.3d 921 (Tex. App.—
Waco 2000, orig. proceeding)⁶²

Holguin v. Ysleta Del Sur Pueblo,
954 S.W.2d 843 (Tex. App.—El Paso
1997, writ denied)⁶³

Bd. of Adjustment v. Rich, 328 S.W.2d
798 (Tex. Civ. App.—Fort Worth 1959,
writ ref'd)⁶⁴

c. Texas trial courts

Frederick v. Way, No. 004-84788-01
(Cnty. Ct. at Law No. 4, Collin Cnty.,
Tex. Mar. 1, 1978)⁶⁵

D. Rules

1. Federal

FED. R. APP. P. 28.1(c)(1)⁶⁶

⁵⁷ *Id.* at 9.

⁵⁸ 10th GREENBOOK at 10.

⁵⁹ *Id.*

⁶⁰ *Id.* at 8.

⁶¹ GREENBOOK at 14–15, 22.

⁶² *Id.* at 33.

⁶³ *Id.* at 22.

⁶⁴ *Id.* at 14, 22.

⁶⁵ *Id.* at 36.

FED. R. CIV. P. 56(c)(1)(A)⁶⁷

FED. R. EVID. 402⁶⁸

2. State

Tex. R. App. P. 9.4(i)(2)(D)⁶⁹

Tex. R. Civ. P. 91a.2⁷⁰

Tex. R. Evid. 902(10)(c)⁷¹

- **But** -

The more common and pre-11th-edition-of-*the-Greenbook* form would be ...

TEX. R. APP. P. 9.4(i)(2)(D)⁷²

TEX. R. CIV. P. 91a.2⁷³

TEX. R. EVID. 902(10)(c)⁷⁴

E. Common Secondary Sources

1. Legal periodicals

James W. Paulsen, *The Judges of the Supreme Court of the Republic of Texas*, 65 TEX. L. REV. 305 (Dec. 1986)⁷⁵

Jim Paulsen & James Hambleton, *Whatever Happened to 1845? The Missing Decisions of the Texas Supreme Court*, 48 TEX. B.J. 830 (July 1985)⁷⁶

⁶⁶ BLUEBOOK at 121.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ GREENBOOK at 66–67.

⁷⁰ *Id.* at 65–66.

⁷¹ *Id.* at 68.

⁷² 10th GREENBOOK at 58.

⁷³ *Id.* at 55.

⁷⁴ *Id.* at 58–59.

⁷⁵ BLUEBOOK at 147, 150.

⁷⁶ *Id.*

2. CLE presentations

Chad Baruch, *The Blue Book: Why it Matters and How it Has Changed, or ... How I Learned to Stop Stressing About Citations and Sleep at Night*, State Bar of Tex. Prof. Dev. Program, State Bar College 14th Annual Summer School, ch. 10 (2012)⁷⁷

3. Texas Pattern Jury Charge volumes

Comm. on Pattern Jury Charges, State Bar of Tex., *Texas Pattern Jury Charges: Business, Consumer, Insurance & Employment* PJC 116.1 (2012)⁷⁸

F. Other Sources**1. Uncodified statutes**

Tex. Rev. Civ. Stat. Ann. art. 1728 (West 1962)⁷⁹

- But -

The more common and pre-11th-edition-of-the-*Greenbook* form would be ...

TEX. REV. CIV. STAT. ANN. art. 1728 (West 1962)⁸⁰

2. Gammel's Laws of Texas

Act approved Jan. 21, 1840, § 1, 4th Cong., R.S., *reprinted in* 2 H.P.N. GAMMEL, LAWS OF TEXAS 1822-97, 401, 402 (Austin, Gammel Book Co. 1898)⁸¹

3. Texas Supreme Court miscellaneous docket⁸²

Order of Aug. 6, 2002, Misc. Docket No. 02-9119, *reprinted in* 65 TEX. B.J. 686, 692 (Sept. 2002) (effective September 1, 2003)

4. Attorney General opinions

Tex. Att’y Gen. Op. No. GA-0002 (2002)⁸³

5. Texas Administrative Code

4 Tex. Admin. Code § 9.12 (2008) (Tex. Dep’t of Agric., Seed Sampling Procedures)⁸⁴

- But -

The more common and pre-11th-edition-of-the-*Greenbook* form would be ...

4 TEX. ADMIN. CODE § 9.12 (2008) (Tex. Dep’t of Agric., Seed Sampling Procedures)⁸⁵

6. Legislative materials

Senate Res. Ctr., Bill Analysis, Tex. S.B. 332, 82d Leg., R.S. (2011) (introduced version)⁸⁶

Act of May 30, 1993, 73d Leg., R.S., ch. 626, 1993 Tex. Gen. Laws 2350⁸⁷

Tex. S.B. 1, 75th Leg., R.S. (1997)⁸⁸

⁸² The Court’s miscellaneous docket is used to issue nonadjudicatory materials (i.e., *not* opinions in causes, original proceedings, or separate opinions to docket votes) such as rule amendments and various administrative orders necessary for the Court to fulfill its role as the chief judicial administrative body of the State of Texas. *See, e.g.*, TEX. GOV’T CODE § 22.003, .0035.

⁸³ GREENBOOK a 76.

⁸⁴ *Id.* at 79–80.

⁸⁵ 10th GREENBOOK at 68.

⁸⁶ *See* GREENBOOK a 71.

⁸⁷ *Id.* at 53.

⁸⁸ *See id.* at 69.

⁷⁷ GREENBOOK at 99.

⁷⁸ *Id.* at 97.

⁷⁹ *Id.* at 42, 51.

⁸⁰ 10th GREENBOOK at 44–45.

⁸¹ *Id.* at 52–53.

7. Restatements

RESTATEMENT (THIRD) OF UNFAIR COMPETITION § 3 (1995).⁸⁹

8. Books

JAMES L. HALEY, *THE TEXAS SUPREME COURT: A NARRATIVE HISTORY, 1836–1986* (Univ. Tex. Press 2013)⁹⁰

The Greenbook: Texas Rules of Form (Texas Law Review Ass’n ed., 12th ed. 2010)⁹¹

- But -

The more common and pre-11th-edition-of-the-*Greenbook* form would be ...

THE GREENBOOK: TEXAS RULES OF FORM (Texas Law Review Ass’n ed., 12th ed. 2010)⁹²

9. Newspapers

Farzad Mashhood, *County to Weigh Courts Office*, AUSTIN AM. STATESMAN, Mar. 25 2013, at B1⁹³

10. Nonconsecutively-paginated magazines

Brian D. Sweany, *Time Will Tell*, TEX. MONTHLY, Mar. 2011, at 10⁹⁴

11. Blogs

David Lat, *Legal Citation of the Day: Pointy Ears Under a Ten-Gallon Hat?*, ABOVE THE LAW (Oct. 27, 2010, 3:02 PM), <http://abovethelaw.com/2010/10/legal-citation-of-the-day-pointy-ears-under-a-ten-gallon-hat/>⁹⁵

12. Other internet sites

BLUEBOOK, UPDATES, <http://j.mp/10KESOZ> (last visited Mar. 21, 2013)⁹⁶

@dodrummond, *May be the first to use an @alleniverson clip in a @TexasBarCLE presentation!* | #practice #citation #TBCEelw, TWITTER (Mar. 21, 2013, 9:30 AM), <http://j.mp/10KFx2Q>

VI. PRECEDENTIAL ORDER OF CITATION

Now we come to the only part of any examination of Texas citation practice to which you should really listen—subsequent history. Everything else is no doubt important aesthetically and tactically, but failing to correctly note the subsequent history of a Texas case can precedentially neuter the cited material.

Depressingly, as frightfully corpulent as the subsequent-history notation system is in Texas, it is actually much worse than most fear. Because of the complexity inherent in our court system as it has developed, it has been the natural tendency of the Texas bar to simplify our citational approach so that no lawyer need be conversant in decades of legal arcana in order to simply cite a case. But this urge to streamline our citation may have had the unintended effect of reducing our collective comprehension of what is truly precedential in Texas in the first place.

Unfortunately, to fully explore this topic takes much more time and print than is afforded here, so I will instead refer you first to Tab A in the Appendix of this article, which contains a “Precedential Order of Citation” outline that notes the varying precedential value accorded a given case in Texas appellate practice, depending on the date and court from whence it issued.

The citation outline is organized to note that all types of cases under category I control over those under category II, and so forth. However, those types of cases listed under any given subcategory (A, B, C.1, etc.), while generally a shade more authoritative than the subcategory

⁸⁹ BLUEBOOK at 122–23.

⁹⁰ *Id.* at 138.

⁹¹ GREENBOOK a 95.

⁹² 10th GREENBOOK at 82.

⁹³ BLUEBOOK at 151.

⁹⁴ *Id.* at 150–51.

⁹⁵ *Id.* at 166–67.

⁹⁶ *Id.* at 139, 167.

below it, do not necessarily control over a latter-listed type of opinion. For example, an authored Texas Supreme Court opinion technically carries the same precedential weight as does a petition-refused intermediate appellate court case, or an adopted or approved opinion of the Texas Commission of Appeals, or even a Texas Supreme Court per curiam opinion. But even though they may have the same precedential import, one would never intentionally cite to a Texas Supreme Court per-curiam opinion for a given point of law if the same issue is addressed in an authored opinion from that Court. This is because per-curiam opinions: (1) have traditionally been used primarily as error-correction vehicles; and (2) frequently merely parrot the seminal holding from an authored opinion.⁹⁷

So the precedential difference between the citation outline’s subcategories lies in the shades of precedential persuasiveness inherent to each type of opinion. Therefore, it may have the most utility in enabling one to distinguish the authority upon which the opposition relies, or winnow weaker cases from one’s own arguments.

Of course, regardless of precedential weight, nearly any source can be persuasive to a future justice, panel, or court—regardless of its inherent precedential authority.⁹⁸

⁹⁷ See Dylan O. Drummond, *Citation Writ Large*, 20 APP. ADVOC. 89, 93–94 (Winter 2007) [hereinafter *Citation Writ Large*]; Hon. Robert H. Pemberton, *One Year Under the New TRAP: Improvements, Problems and Unresolved Issues in Texas Supreme Court Proceedings*, in State Bar of Tex. Prof’l Dev. Program, Advanced Civil Appellate Practice Course ch. B, B-18 (1998). Compare, e.g., *Tooke v. City of Mexia*, 197 S.W.3d 325, 328 (Tex. 2006), with *Satterfield & Pontikes Const., Inc. v. Irving Indep. Sch. Dist.*, 197 S.W.3d 390, 391 (Tex. 2006) (per curiam) (hinging its holding on the “reasons explained in” *Tooke*).

⁹⁸ Jim Paulsen & James Hambleton, *Confederates & Carpetbaggers: The Precedential Value of Decisions from the Civil War and Reconstruction Era*, 51 TEX. B.J. 916, 918–19 (Oct. 1988) [hereinafter *Confederates & Carpetbaggers*]; see also *Robinson v. Crown Cork & Seal Co.*, 335 S.W.3d 126, 162 n.21 (Tex. 2010) (Willett, J., concurring, joined by Lehrmann, J.) (citing *STAR TREK II: THE WRATH OF KHAN* (Paramount Pictures 1982)); see also Dylan O. Drummond, *A Vote By Any Other Name: The (Abbreviated)*

VII. COMMON AND NOT-SO COMMON TIPS, TRICKS & TRAPS

Some of the following are citational mandates you must follow pursuant to the strictures of the *Bluebook* and/or *Greenbook*, while others are my own persnickety preferences that have evolved over the years, which I urge you to consider adopting.

A. Federal Appellate Courts

* If a U.S. Supreme Court opinion is published in the *U.S. Reports* (“U.S.”), cite only to that reporter.⁹⁹ Do not include parallel citations to the *Supreme Court Reporter* (“S. Ct.”) or the *United States Supreme Court Reports Lawyers’ Edition* (“L. Ed.”).¹⁰⁰ If the decision has not yet appeared in the *U.S.*, cite to the *S. Ct.*, and then to *L. Ed.*, in that order.¹⁰¹

* The *Federal Appendix* is likely one of the clearest examples of an existential jurisprudential oxymoron. This is because it exists to publish every federal circuit appellate opinion that has not been designated for publication in the *Federal Reporter*.¹⁰² In other words, it publishes unpublished federal appellate opinions.

* There is no space in the reporter abbreviation, “U.S.,” but is a space in both “S. Ct.” and “L. Ed.”¹⁰³ The same is true for circuit and district court

History of the Dissent from Denial of Review at the Texas Supreme Court, APP. ADVOC., Spring 2006, at 11–15 (cataloguing the persuasive impact dissents from denial of review at the Texas Supreme Court have had on subsequent majority opinions).

⁹⁹ BLUEBOOK at 215.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² BLACK’S LAW DICTIONARY 685 (9th ed. for iPhone/iPad/iPod Touch 2011).

¹⁰³ BLUEBOOK at 215.

reporters: “F.3d,” but “F. App’x” and “F. Supp. 2d”¹⁰⁴

- * Always be careful in the spacing applied to court abbreviations: “5th Cir.,” “D.C. Cir.,” “W.D. Tex.,” but “S.D.N.Y.”

B. Texas Appellate Courts

1. Texas Supreme Court

- * Between 1886 and 1962, Texas Supreme Court cases were printed in both the *Southwestern Reporter* series and the *Texas Reports*.¹⁰⁵ Although the most recent edition of the *Greenbook* abandons the previous requirement to include parallel citations to both reporters,¹⁰⁶ I would advise to consider continuing to note both. If both reporters are cited, remove the “Tex.” designation from the date parenthetical.¹⁰⁷
- * Texas Supreme Court opinions issued during Reconstruction (dubbed the “Military Court”) from 1867–70 (30 Tex. 375 to 33 Tex. 584) are not precedential because the Court operated without constitutional authority during that time.¹⁰⁸
- * Opinions issued by the so-called “Semicolon Court” that sat from 1870–73 (33 Tex. 585 through 39 Tex.), while technically precedential, are often not

accorded jurisprudential respect because of the juridic pall that hung over that Court.¹⁰⁹

- * You can say the Court acted in many different ways, but do not say it that it ever “found” something, when really just referring to its holding. Technically, the Court can’t “find” anything, because it is constitutionally-barred from adjudging facts.¹¹⁰ This is a minor nit, but jurisdictionally important and one that I will relay to you that Court staff notice in briefing.

2. Texas courts of appeals

a. Subsequent history

Perhaps no other peculiarity of Texas caselaw citation is as complicated, misunderstood, and precedentially crucial as Texas subsequent history. Accordingly, I have included a separate section briefly discussing the weight of authority denoted by certain subsequent-history notations at Part VI, *supra*, as well as appended a “Precedential Order of Citation” at Tab A of the Appendix.¹¹¹ The tips and traps discussed below have less to do with precedential heft per se than with purely citational concerns.

- * For quick and easy reference, please consult Rules 4.4.1 and 4.4.2, as well as Appendices D & E in the *Greenbook* for an abbreviated discussion of the various

¹⁰⁴ *Id.* at 215–16.

¹⁰⁵ GREENBOOK at 9.

¹⁰⁶ Compare, e.g., GREENBOOK at 9, with 10th GREENBOOK at 8.

¹⁰⁷ GREENBOOK at 9. The reason for this is that it the dual reporter citation noting publication in the *Texas Reports* obviates the need for a “Tex.” designator in the date parenthetical.

¹⁰⁸ *Confederates & Carpetbaggers*, 51 TEX. B.J. at 920; see also *Peck v. City of San Antonio*, 51 Tex. 490, 492 (1849); *Citation Writ Large*, 20 APP. ADVOC. at 92. A helpful table summarizing the Military Court’s duration and precedential authority is attached hereto at Appendix Tab C.

¹⁰⁹ *Confederates & Carpetbaggers*, 51 TEX. B.J. at 920; see also *Citation Writ Large*, 20 APP. ADVOC. at 92–93. A helpful table summarizing the Semicolon Court’s duration and precedential authority is attached hereto at Appendix Tab C.

¹¹⁰ TEX. CONST. art. V, § 6.

¹¹¹ For a much more thorough examination, please see *Citation Writ Large*, 20 APP. ADVOC. 89, cited in *Gonzalez v. Texas*, No. 13-07-00270-CR, 2009 Tex. App. LEXIS 5860 at *12 n.2 (Tex. App.—Corpus Christi July 30, 2009, no pet.) (mem. op.); *Tex. S. Rentals, Inc. v. Gomez*, 267 S.W.3d 228, 239 n.8 (Tex. App.—Corpus Christi 2008, no pet.); Andrew T. Solomon, *Practitioners Beware: Under Amended Trap 47, “Unpublished” Memorandum Opinions in Civil Cases are Binding and Research on Westlaw and Lexis is a Necessity*, 40 ST. MARY’S L.J. 693, 702 n.34 (2009).

subsequent history notations used in Texas.¹¹²

- * In order to be able to determine whether the notations, “no pet.” or “no pet. h.” are appropriate, you must investigate whether: (1) a petition for review has been filed; (2) a motion for rehearing or en banc review is still pending; or (3) forty-five days have elapsed since the appellate court’s judgment or the court’s ruling on a motion for rehearing or en banc review.¹¹³ It may be necessary to check the website of a given court of appeals or that of the Texas Supreme Court to determine if a motion for rehearing has been filed or a motion to extend time has been filed.
- * Currently, there is no defined notation for a cause at the Texas Supreme Court in which briefing on the merits has been ordered. This is because the existing “pet. filed” notation expressly applies only to matters in which merits briefing has not been ordered.¹¹⁴ Therefore, I recommend using the “pet. pending” notation.¹¹⁵
- * I may be the only person left in Texas who still feels so, but I find it both

quicker and easier to look up subsequent history of cases using Thomson Reuters’s annually printed *Texas Subsequent History Table*,¹¹⁶ than logging onto either Westlaw or Lexis, retrieving a case, and then clicking on the subsequent history link.

b. Everything else

- * Always be sure to double-check 1997 intermediate appellate court opinions to determine whether they were issued before or after September 1, 1997: (1) if issued before September 1st, any subsequent history notation should reference the application for “writ” of error, and (2) if issued on or after September 1st, any subsequent notation should reference the “pet.” for review.¹¹⁷
- * Because Texas’s intermediate appellate courts had no criminal jurisdiction from 1911 to August 31, 1981, refer to courts from this period in citations as “Tex. Civ. App.” instead of “Tex. App.”¹¹⁸
- * Any intermediate appellate court opinion issued before January 1, 2003 that was also affirmatively designated, “do not publish,” has no precedential value but may cited with the parenthetical notation, “(not designated for publication).”¹¹⁹ It is erroneous and without precedential effect if a court of appeals mistakenly affixes a “do not publish” designation to a case after January 1, 2003.¹²⁰

¹¹² GREENBOOK at 22, 106–12. While the current *Greenbook*’s treatment of subsequent history offers a good cursory overview, Appendices A & B from the 9th edition, second printing, are much more thorough, and I highly recommend consulting them. TEXAS RULES OF FORM 84–88 (Texas Law Review Ass’n ed., 9th ed., 2d prt. 1998). Even better still is a table compiled by former Texas Supreme Court Justice Gordon Simpson in his 1949 *Texas Bar Journal* article entitled, “Notations on Applications for Writ of Error,” which is attached hereto at Appendix Tab D. Hon. Gordon Simpson, *Notations on Applications for Writ of Error*, 12 TEX. B.J. 547, 574–75 (Dec. 1949).

¹¹³ See TEX. R. APP. P. 53.7(a); GREENBOOK at 22, 106–09.

¹¹⁴ GREENBOOK at 108.

¹¹⁵ *Citation Writ Large*, 20 APP. ADVOC. at 102 n.156. Indeed, the Court has already used this notation in select instances. See, e.g., *Lamar Homes, Inc. v. Mid-Cont. Cas. Co.*, 239 S.W.3d 236, 241 (Tex. 2007).

¹¹⁶ THOMSON REUTERS, 2012 TEXAS SUBSEQUENT HISTORY TABLE (West 2012).

¹¹⁷ GREENBOOK at 22.

¹¹⁸ *Id.* at 18.

¹¹⁹ TEX. R. APP. P. 47.7(b).

¹²⁰ *Id.* at 47.2(c), 47.7(b).

C. Texas Legislative Materials

- * If the session law being cited has no formal name (i.e., the “Tanning Facility Regulation Act”), then note the date of enactment in the citation (“Act of May 29, 1993”)¹²¹
- * One of the most common citation mistakes that befall practitioners is affixing the proper date of enactment to a session law. The date of enactment of a session law is the “final relevant legislative action on the bill, not the date of executive approval.”¹²² Typically, this date is the day upon which the remaining legislative body (House or Senate) approved the measure. The easiest way to investigate not only pertinent dates of legislative action, but bill text, and a host of other information is by visiting the *Texas Legislature Online* website, which provides a search feature going back to the 71st Regular Legislative Session in 1989.¹²³

D. Internet-Specific Tips

- * URL¹²⁴ citations are long and awkward, and make the spacing of a particular citation sentence either in text or in a footnote disjointed. There is a way in text to manually wrap URL address to the next line using a hard-return, and yet still preserve the link itself. Specifically, simultaneously depress the “Ctrl + Shift + Enter” keys at any point in the URL

address you deem will best fit the remaining space on a given line (i.e., “eyeball” it). Oftentimes, it takes a bit of trial and error to find just the right wrapping point. Once you do split the URL address, then both the spacing after the line above and the spacing the new line below need to be adjusted to “0,” because the default will include unwanted spacing between the two. See Part V(F)(11), *supra*, for an example of this type of text-wrapping. Of note, however, this functionality in MS Word works only in text, but not in footnotes.

- * Because of the unwieldy length of most URL addresses, consider using a URL-shortening service like Bit.ly (<https://bitly.com/>), Ow.ly (<http://ow.ly/url/shorten-url>), or my favorite—which I have used almost exclusively throughout this article and also offers a handy Google Chrome extension—J.mp (<https://bitly.com/> as well).
- * For most internet citations, no parenthetical indicating the date of the user’s last visit should be used.¹²⁵ Instead, one should only use such a date parenthetical if the web content itself is undated.¹²⁶ This level of date attribution is only meant to denote that the website existed as cited on the date last visited, but offers no guarantee of its content or even its permanence going forward.
- * Because of the inherent impermanence both of the content and location of internet website resources, citing them is fraught with difficulty both substantively and procedurally. Always consider first and foremost whether an internet resource is the most persuasive and authoritative for a given point. Most times it is not, but that dynamic is admittedly changing. To logistically assist with the impermanence of internet

¹²¹ GREENBOOK at 53–55.

¹²² *Id.* at 54.

¹²³ See TEXAS LEGISLATURE ONLINE, <http://www.capitol.state.tx.us/> (last visited Mar. 25, 2013).

¹²⁴ “URL” is short for “uniform resource locator,” and is a term that denotes, in essence, a website’s address. See, e.g., WIKIPEDIA, THE FREE ENCYCLOPEDIA, “UNIFORM RESOURCE LOCATOR,” <http://j.mp/10KHV9T> (last visited Mar. 26, 2013) (“A uniform resource locator, abbreviated URL, also known as web address, is a specific character string that constitutes a reference to a resource.”). For example, TexasBarCLE’s URL is: <http://www.texasbarcle.com/CLE/HOME.ASP>.

¹²⁵ BLUEBOOK at 168.

¹²⁶ *Id.*; *Judges Really Do Care About That!* at 9.

resources, consider using an archive service, which (presumably for as long as the provider is a going business concern) will affix both a permanent URL as well as preserve the website’s content and links. The two services I recommend are Evernote (<https://evernote.com/>)—which I prefer, in part, due to its mobile app and Google Chrome extension called “Web Clipper”—or Iterasi (<http://www.iterasi.com/>). Please see footnotes 21, 124, and 194 for examples of the utility of these types of services.

** So, it is now technically possible to address both the typographical difficulty of inserting large URLs into text, as well as the impermanence of the URL itself and its content. Combining the use of, say for example, a j.mp-shortened URL with an Evernote web clipping should negate both issues. Please see footnotes 21, 124, and 194 for examples of the utility of the combination of services. Although perhaps a useful way to cite any internet resource, I would recommend only going to the trouble using both archive and URL-shortener services when the cited source is inherently subject to user editing—such as *Wikipedia*. Remember, however, to always test your links after creating them to be sure they send your reader where you have told them they’re going!

** Can I cite Wikipedia? This question was posed and thoroughly examined by outstanding Houston appellate lawyer Robert Dubose in 2011.¹²⁷ The answer is a resounding ... maybe.¹²⁸ Incredibly, as of a few years ago, some 550 judicial opinions have cited to *Wikipedia*.¹²⁹ And,

although its content is user-generated¹³⁰ and user-manipulated, *Wikipedia* is surprisingly and durably accurate as well.¹³¹ However, obvious substantive risks in relying upon *Wikipedia* as a source in briefing include the potential for litigants to manipulate online entries and for other material inaccuracies to occur.¹³²

E. Substantive Citation Usage Tips

1. Persuasive strategy before courts

** “Describe and cite authorities with scrupulous accuracy.”¹³³ Avoid the appearance of misdirection and distortion at all costs or your credibility to your reader will quickly be forfeit.¹³⁴

** “Cite authorities sparingly.”¹³⁵ Envision citing authority lightly and illustratively, akin to “pictures in a book,” rather than making one’s reasoning the “servant of his authorities.”¹³⁶

** Quote authorities even less than you cite them.¹³⁷ Do not merely assemble or compile someone else’s thoughts and work.¹³⁸ Instead, the best way to show a

¹³⁰ Other common websites that rely on user-generated content include: Facebook, YouTube, *Urban Dictionary*, and Yelp. *Id.* at 4.

¹³¹ *Id.* A study by *PC Pro* magazine in 2007 found that errors intentionally inserted into ten different *Wikipedia* pages, ranging from “obvious” to “deftly subtle,” were corrected by the *Wikipedia* community in under an hour. *Id.*

¹³² *Id.*

¹³³ MAKING YOUR CASE at 123.

¹³⁴ *Id.*

¹³⁵ *Id.* at 125.

¹³⁶ *Id.* at 126 (quoting HOWARD C. WESTWOOD, BRIEF WRITING (1935), in ADVOCACY AND THE KING’S ENGLISH 563, 565 (George Rossman ed., 1960)).

¹³⁷ *Id.* at 127.

¹³⁸ Scott P. Stolley, *Writing on Writing: Quotation Disease*, HEADNOTES, July 2011, at 10.

¹²⁷ Robert Dubose, *Can I Cite Wikipedia? Legal and Ethical Considerations for Appellate Lawyers Citing Facts Outside the Record in the Age of the Internet*, State Bar of Tex. Prof. Dev. Program, 25th Annual Advanced Civil Appellate Practice Course (2011).

¹²⁸ *Id.* at 1, 8.

¹²⁹ *Id.* at 1.

court your reasoning is in your own words.¹³⁹

- ✱✱ The proper use of signals is paramount in establishing one’s credibility to the reader.¹⁴⁰ Scrupulously study *Bluebook* Rule 1.2 to avoid giving your reader the impression that what may have been an inadvertent mistake was, in fact, aimed at recasting the import of cited authority in one’s favor.¹⁴¹
- ✱✱ One of the quickest and certain ways not only to damage your credibility before a court and its staff, but to annoy them as well is to fail to pincite (i.e., including specific page numbers where the proposition being cited is found) your sources.¹⁴² Neglecting to do so gives the impression to the reader that the author was either lazy or inept—neither of which make for very persuasive writing.

2. Parenthetical usage

- ✱✱ Generally, it is always a good idea to include a short parenthetical letting your reader know why you have cited a case, particularly if the relevance of the case is not overtly clear.¹⁴³ Formally, the use of parentheticals is “strongly recommended” with the use of “*cf.*,” “*compare*,” “*but cf.*,” and “encouraged” with “*see also*” signals.¹⁴⁴
- ✱✱ One of the signals of which I have grown quite fond is “*compare*.”¹⁴⁵ If space is not at a premium, I find comparing two sources to be far more compelling and illustrative than just a “*see*” cite with a parenthetical often can be.

- ✱✱ Three characteristics of well-crafted parentheticals are that the parenthetical must: (1) tell the reader why you are citing the source if it’s not clear from the preceding sentence; (2) show the reader where the case fits into the theme or focus of the piece as a whole; and (3) do so in a clear and concise manner.¹⁴⁶
- ✱✱ Deftly combining these three elements should produce a parenthetical that: (1) is a “participle parenthetical,” which begins with an “-ing word”; and (2) consists of a single-sentence quotation.¹⁴⁷
- ✱✱ Conversely, poorly drafted parentheticals generally contain two hallmarks: (1) unnecessary length; and (2) duplication of and mere echoing of the text to which the citation is affixed.¹⁴⁸ Specifically, verbose parentheticals can “turn fluid prose into a choppy mess.”¹⁴⁹ In order to remedy this, *Circuit Splits*¹⁵⁰ founder, Nicholas Wagoner, suggests thinking of parentheticals as a Twitter post—140 characters or less.¹⁵¹
- ✱✱ Always denote any procedural information specific to the handling of the case cited ((per curiam),¹⁵²

¹³⁹ *Id.*

¹⁴⁰ MAKING YOUR CASE at 123.

¹⁴¹ See BLUEBOOK at 55–56.

¹⁴² *Id.* at 67; *Judges Really Do Care About That!* at 6.

¹⁴³ BLUEBOOK at 59.

¹⁴⁴ *Id.* at 54–55.

¹⁴⁵ BLUEBOOK at 55.

¹⁴⁶ Nicholas Wagoner, *Tips for Writing Better Parentheticals – Part 2*, LEGAL SKILLS PROF BLOG (Jan. 29, 2012), <http://j.mp/11JmRDc> (citing ROSS GUBERMAN, POINT MADE: HOW TO WRITE LIKE THE NATION’S TOP ADVOCATES (Oxford Univ. Press 2011)).

¹⁴⁷ *Id.*

¹⁴⁸ Nicholas Wagoner, *Guest Blogger Nick Wagoner on “Common Parenthetical Pitfalls,”* LEGAL SKILLS PROF BLOG (Jan. 19, 2012), <http://j.mp/11JpZiv> [hereinafter *Common Parenthetical Pitfalls*].

¹⁴⁹ *Id.*

¹⁵⁰ CIRCUIT SPLITS, <http://www.circuitsplits.com/> (last visited Mar. 26, 2013).

¹⁵¹ *Common Parenthetical Pitfalls*.

¹⁵² See TEX. R. APP. P. 47.2(a), 59.1; BLUEBOOK at 100.

(orig. proceeding),¹⁵³ (not designated for publication),¹⁵⁴ (op. on reh’g), (mem. op.),¹⁵⁵ etc.).

* All subsequent-history explanatory phrases (“*aff’g*,” “*aff’d*,” “*rev’d*,” “*rev’g*,” etc.) are italicized and should be offset from the case it modifies by a comma, in addition to whatever succeeding comma structure is indicated in *Bluebook* T8.¹⁵⁶ Generally, present-tense explanatory phrases are not succeeded by commas, while past-tense phrases are.¹⁵⁷

* Closely tied to the preceding tip is the oft-confused difference between, “(citing” or “(quoting” and “, *cited in*” or “, *quoted in*”¹⁵⁸ The present-tense form, un-italicized and contained within a parenthetical, is used to refer to another source whose content is being referenced in the cited source.¹⁵⁹ The past-tense form, italicized and preceded by a non-italics comma is used to indicate that the cited source is referenced in another source.¹⁶⁰ Always remember to add in an additional close-parens after the referenced source’s date parenthetical in any “quoting” or “citing” parenthetical (“(citing ... (1967))”).

* At times, parentheticals can stack up at the tail end of a citation. In those instances, generally organize the order of parentheticals as follows: (1) weight-of-authority parentheticals; (2) “quoting”

or “citing” parentheticals; and (3) explanatory parentheticals.¹⁶¹ For example: “*X v. Y* (court date) [hereinafter *Z*] (en banc) (Lastname, J., concurring) (per curiam) (emphasis added) (citations omitted) (quoting *W*), *rev’g U*.”¹⁶²

F. Typographical Citation Usage Tips

* Only one space after any punctuation—including after sentences!¹⁶³

I understand the typographic outrage this pronouncement may evoke—I used to be an avowed “2-spacer” myself. My argument was that having two spaces after a sentence helped more effortlessly orient one’s eye to the sentence structure on a given page. While I still think that’s true, I find now that I do indeed prefer 1 space to 2, and that the text flows much better without the extra space. Plus, doublespacing is another artifact from the typewriter era that has no place in digital drafting and publication.¹⁶⁴

* Simultaneously depress “Ctrl + Shift + Space bar” to insert a nonbreaking space.¹⁶⁵ Nonbreaking spaces should be used between section symbols and section numbers (“§ 1983”), as well as with paragraph symbols (“¶ 9”), chapter designations (“ch. 3”), and the like.¹⁶⁶ I also prefer to use nonbreaking spaces between “Tex.” and the year in Texas Supreme Court citations (“Tex. 2012”), with reporter cites (“1 S.W.3d 75”), between any two-word procedural

¹⁵³ See GREENBOOK at 32–35.

¹⁵⁴ TEX. R. APP. P. 47.7(b); GREENBOOK at 16.

¹⁵⁵ See TEX. R. APP. P. 47.2(a), 47.4; BLUEBOOK at 100; GREENBOOK at 16.

¹⁵⁶ BLUEBOOK at 102–03, 434–35.

¹⁵⁷ *Id.* at 434–35.

¹⁵⁸ See *id.* at 100–01.

¹⁵⁹ See *id.*

¹⁶⁰ See *id.*

¹⁶¹ *Id.* at 101.

¹⁶² *Id.* at 60.

¹⁶³ BUTTERICK at 41–44 (citing Bryan A. Garner, THE REDBOOK: A MANUAL ON LEGAL STYLE 83 (2d ed. 2006)).

¹⁶⁴ See *id.* at 41, 43.

¹⁶⁵ *Id.* at 63.

¹⁶⁶ See *id.*

phrase—“per curiam,” “pet. denied,” “en banc,” “orig. proceeding,” “mem. op.,” etc. My practice is the same for “Tex. App.” notations within a citation, for Texas and federal rule citations (“TEX. R. EVID. 902”), in short-cites between “at” and the pincite, as well as for full date phrases (“Jan. 1, 2013”). I also consistently use nonbreaking spaces to ensure that numbered-list numerals stay on the same line as the text they introduce (“this list: (1) stays together; because (2) of nonbreaking spaces”). Basically, my preference is to never strand a date, year, procedural descriptor, or a source numeral so that the reader has to search for the remainder of the citation. One other advantage generally in using a nonbreaking space is that it will reduce the amount of space between the two linked characters when text is fully justified.

- * Both the *Bluebook* and *MUS* posit that an ellipsis is 7 characters long (“•••••”) and expressly direct practitioners not to use a shorter version containing only 5 characters (“•...•”).¹⁶⁷ I am at a loss to divine what citational calamity would befall the legal community if ellipses were uniformly trimmed by 2 characters (mere spaces no less!), but I never use the longer version in my writing to any audience. I recommend the same practice for end-of-sentence ellipses as well (“•....•”). Of note, I also

recommend inserting a nonbreaking space between the end of the quoted material and the beginning of the ellipses so that the ellipses stays with the quoted text.¹⁶⁸

- * The differing applications of “em” and “en” dashes¹⁶⁹—not to mention hyphens—are often confusing. En dashes should always be used when denoting a range of values (“1–6”),¹⁷⁰ and em dashes are uniformly used in Texas intermediate appellate citations to denote which court of appeals issued the opinion (“Tex. App.—Austin”).¹⁷¹ Em dashes are also utilized to set off words, phrases, or short sentences that clarify or elaborate on the preceding text.¹⁷²
- * While there is some debate what precise role an em dash should play in one’s writing (whether it interchangeably replaces a colon, semicolon, or parentheses;¹⁷³ or whether it operates as a stronger alternative to a comma, but weaker than a colon, semicolon, or parentheses¹⁷⁴), it is generally underused in legal writing.¹⁷⁵ Typically, I use em dashes when I want to emphasize a point visually more so than could be done with just a comma, or if the preceding passage

¹⁶⁷ BLUEBOOK at 78; MUS at 5–6. The MS Word character for the 3-dot ellipsis can be created by holding down the “Alt” key and typing “0133” (even though the *Bluebook* and *MUS* explicitly counsels against its use). BUTTERICK, at 53. Noted legal typography expert, Matthew Butterick, advises that simply typing three or four periods together is too short, and following the *Bluebook* and *MUS* rule of including spaces between each period is too long. BUTTERICK at 53. If you insist on inserting actual spaces between the periods, do so only with nonbreaking spaces so that the ellipses itself remains intact. BUTTERICK at 54.

¹⁶⁸ See BUTTERICK at 54.

¹⁶⁹ Interestingly, the terms, “em” and “en” don’t, in fact, refer to the horizontal distance above an “m” as compared to an “n.” *Id.* at 49. Instead, they are artifacts of the typesetting age, where an em was a typographical unit of measurement spanning the vertical distance from the top of a piece of type to the bottom. *Id.* In turn, an en was half that distance. *Id.* In modern digital fonts, however, em and en dashes run narrower than they did historically. *Id.*

¹⁷⁰ *Id.*; MUS at 15.

¹⁷¹ See GREENBOOK at 14–15.

¹⁷² MUS at 12; BUTTERICK at 49.

¹⁷³ MUS at 12.

¹⁷⁴ BUTTERICK at 49.

¹⁷⁵ *Id.*

is already replete with commas and to add more would only confuse.

- * Usually, em dashes are used to set off a phrase or an aside, which requires em dashes on either end of the passage. However, em dashes can also be used effectively to highlight a parting thought at the end of a sentence, in which case only a preceding em dash is needed. One trap to be wary of, however, is beginning or ending a thought within a sentence with an em dash, but using a comma or semicolon on the other end of the offset aside.
- * Italicize a comma within a signal phrase, but not after: “*see, e.g.,*”.¹⁷⁶
- * In addition to its traditional use of separating a related or derivative clause in a compound sentence, semicolons may also be used to separate items in a series containing complex punctuation.¹⁷⁷ I tend to use semicolons in this way if the preceding items already contain commas, I will distinguish between distinct thoughts with semicolons.
- * In Texas legal writing, the serial or “Oxford” comma (to which it is sometimes referred) is favored (“x, y, and z”).¹⁷⁸
- * Traditionally, numbered lists were to be preceded by a colon, the numbers encased in parentheses, and each discrete item separated by a semicolon (“the list: (1) blah; (2) blaher; and (3) blahest”). The newest edition of the *MUS* now counsels that, in contrast to previous editions, numbered lists should follow this format (1) no colon, and (2) only commas to separate thoughts.¹⁷⁹

Either due to old age or stubbornness (perhaps both), I prefer and employ the former approach.

- * When citing sections and paragraphs, use the “§” and “¶” symbols.¹⁸⁰ A common trap to avoid is to remember when pinciting to either, do not precede them with “at” (“*Id.* § 7” & “MOORE ET AL., *supra* n.5, ¶ 56.07”).¹⁸¹
- * Spell out “section” in text, and reserve the use of the “§” symbol for use in citation sentences. The current edition of the *MUS* has reversed course on this and now appears to allow section symbols in text, but I don’t recommend leaping off that typesetting cliff just yet.¹⁸²
- * Use curly quotation marks and apostrophes, not straight ones.¹⁸³ The only reason the straight version of these marks exist is due the mechanical constraints of typewriters during at the turn of the *last* century when the physical space on metal typesets was limited.¹⁸⁴

G. Footnote or Footnot?

- * Almost uniformly in persuasive writing before a court, avoid putting substantive arguments in footnotes.¹⁸⁵ That said, while the cogent and streamlined argument should remain in the text, the footnotes can be useful in laying out potentially helpful elaboration, addressing the opposing side’s weaker arguments, or even addressing

¹⁷⁶ BLUEBOOK at 54.

¹⁷⁷ MUS at 7.

¹⁷⁸ *Id.* at 7–8.

¹⁷⁹ *Id.* at 21–22.

¹⁸⁰ BLUEBOOK at 69.

¹⁸¹ *Id.*

¹⁸² MUS at 28.

¹⁸³ BUTTERICK at 38.

¹⁸⁴ *Id.* at 38–39.

¹⁸⁵ MAKING YOUR CASE at 129–30.

arguments likely to occur to the judge or the judge’s staff.¹⁸⁶

- * Academic writing is another matter. As this article exemplifies (for better or worse), I revel in the substantive footnote when confined to a legal periodical. To my mind, it is often far more interesting to read the footnotes of some articles (where the meat of the exposition tends to be) than is the text itself.
- * There is little consensus amongst both the bench and bar regarding whether or not to footnote.¹⁸⁷ My preference is to favor footnotes generally because they allow the bulk of the citational baggage to be stored below, out of sight. If your reader really wants to investigate, it’s there waiting for them, but they are not forced to leap over large swaths of referential real estate if they do not. Ultimately, of course, I recommend getting to know your target audience as well as you can and structuring your writing from top to bottom—including citation—to best fit their preference.

H. Grammatical Reminders & Suggestions

- * The *MUS* provides an invaluable appendix containing ten pages of commonly-misused words and explanations and addressing the proper usage of each—including “that” versus “which,” “because” versus “since,” and “who” versus “whom.”¹⁸⁸
- * The *MUS* also contains a very useful listing of which foreign words and phrases should be italicized and which

should not (“de novo” versus “*mens rea*”).¹⁸⁹

- * When you precede a contingent phrase with “that,” it must be bookended by commas (“that, because [x], [y] occurred”; “that, although [x], [y] occurred”; “that, if [x], then [y]”; “that, while [x], [y] is nonetheless true”; “that, under [x], [y] governs”).
- * Sometimes it just gets monotonous to always state that a court “held” something. So here are some other suggestions you can use to describe the action taken by a court: acknowledged, adapted, allowed, analyzed, approved, clarified, concluded, confirmed, corrected, decided, declared, decreed, determined, developed, elaborated, evaluated, expanded, explained, implemented, instructed, interpreted, justified, limited, maintained, noted, observed, ordered, opined, professed, pronounced, proposed, propounded, reasoned, recited, reinforced, reported, revealed, reviewed, revised, ruled, simplified, solved, stated, streamlined, supported, surmised, and utilized.
- * Despite the fact that no self-respecting attorney would ever phonetically utter it in court, “pleaded” has somehow become the preferred past-tense of “pled” in written materials.¹⁹⁰ If it sounds too ridiculous to say, it must also be too ridiculous to write.¹⁹¹ Despite being labeled as the minority usage, recent polls and studies have found both lawyers and courts prefer “pled.”¹⁹² In addition, favoring “plead” as the past-

¹⁸⁶ *Id.* at 131.

¹⁸⁷ *See, e.g., id.* at 132–35 (Professor Bryan Garner and U.S. Supreme Court Justice Antonin Scalia disagreeing regarding the efficacy of footnoting in briefing).

¹⁸⁸ *MUS* at 69–79.

¹⁸⁹ *Id.* at 46.

¹⁹⁰ *See* BLACK’S LAW DICTIONARY 1270 (9th ed. for iPhone/iPad/iPod Touch 2011); *MUS* at 76; John Chandler & Brian Boone, *War of the Words: Pleaded vs. Pled*, LTN: LAW TECHNOLOGY NEWS (Jan. 16, 2013), <http://j.mp/11lgMa4> [hereinafter *War of the Words*].

¹⁹¹ *See War of the Words*.

¹⁹² *Id.*

tense form is confusing since it shares the same spelling as the present-tense form.¹⁹³ Indeed, Gen. George S. Patton didn’t “leaded” the Third Army to victory at the Battle of the Bulge—he “led” them.¹⁹⁴ Undoubtedly, if it’s good enough for Patton and the Free World, it’s certainly good enough for legal prose.

I. Requisite Abbreviations

✱ Case styles should be properly abbreviated in footnotes.¹⁹⁵ In doing so, one should consult several abbreviation tables in the *Bluebook*, including: T6 (general and common abbreviations),¹⁹⁶ T7 (court names),¹⁹⁷ T9 (legislative abbreviations),¹⁹⁸ T10 (geographical terms—including U.S. states and select cities),¹⁹⁹ T11 (judicial abbreviations),²⁰⁰ T12 (months (only June & July are not abbreviated)),²⁰¹ T13 (legal periodical titles),²⁰² T14 (publishing terms),²⁰³ T15 (service publishers and

reporters),²⁰⁴ and T16 (subdivision abbreviations).²⁰⁵

✱ Of note, the 19th edition of the *Bluebook* now includes an abbreviation for “County”: “Cnty.”²⁰⁶

✱ Common abbreviated terms that are often confused in citations are “L.” for “Law” versus “Law.” for “Lawyer.”²⁰⁷ In addition, “*Law Review*” is abbreviated to “L. Rev.” but “*Law Journal*” is abbreviated to “L.J.”²⁰⁸

✱ Although there seems to be some aversion among some in the bar to doing so, in case styles within a footnote abbreviate every word for which exists an abbreviated form—including the first word.²⁰⁹

✱ When case styles are referenced in text, as opposed to footnotes, only the following terms may and ought to be abbreviated: “Ass’n,” “Co.,” “Corp.,” “Inc.,” “Ltd.,” and “No.”²¹⁰

✱ Abbreviations for all the Texas subject-matter codes, as well as for Texas legal periodicals that may not necessarily appear in the *Bluebook*’s T13, are found in Appendix H.1 of the *Greenbook*.²¹¹

J. Remaining Odds & Ends

✱ Although this rule is rarely, if ever, consistently followed, periods and commas should be placed within quotation marks, question marks and exclamation points should be placed within quotation marks only if in the

¹⁹³ See *id.*

¹⁹⁴ See, e.g., WIKIPEDIA, THE FREE ENCYCLOPEDIA, “GEORGE S. PATTON: BATTLE OF THE BULGE,” <http://j.mp/11InQ6O> (last visited Mar. 26, 2013).

¹⁹⁵ BLUEBOOK at 94–95.

¹⁹⁶ *Id.* at 430–31.

¹⁹⁷ *Id.* at 432–34.

¹⁹⁸ *Id.* at 435–36.

¹⁹⁹ T10.1 lists abbreviations for U.S. states as well as select territories and cities. *Id.* at 436–37. T10.2 & T10.3 lists abbreviations for foreign countries and regions. *Id.* at 438–43.

²⁰⁰ *Id.* at 443.

²⁰¹ *Id.* at 444.

²⁰² *Id.* at 444–67.

²⁰³ *Id.* at 468.

²⁰⁴ *Id.* at 468–72.

²⁰⁵ *Id.* at 472–73.

²⁰⁶ *Id.* at 430.

²⁰⁷ *Id.* at 456.

²⁰⁸ See *id.* at 445–67.

²⁰⁹ *Id.* at 94.

²¹⁰ *Id.* at 93.

²¹¹ GREENBOOK at 117–18.

original quoted text, and colons and semicolons should be placed outside the quotation marks.²¹² This is the “American” style of quotation punctuation, and because it is so confusing, few rarely comply with it—either intentionally or unintentionally. There is another, simpler system—the “British” style—which at least one Justice on the Texas Supreme Court strongly favors. The British style directs a practitioner to only include that punctuation which originally appears in the material being quoted.²¹³

- * Do not insert spaces between subparts of statutes or rules: (“§ 22.001(a)(6),” not “§ 22.001 (a) (6)”).
- * When citing to footnotes, do not insert a space between the “n.” abbreviation and the footnote number (“n.4” not “n. •4”).²¹⁴
- * When using multiple signals in a citation sentence, signals of different types (supportive, comparative, contradictory, or background) cannot be separated merely by a semicolon, but must instead be placed in different citation sentences.²¹⁵
- * As goofy as it undoubtedly looks, the correct possessive form for an action by a given court of appeals is “court of appeals’s.” This is because there is only one entity—the singular court—carrying out the action.²¹⁶

- * The same is true for “Texas.” Always add “’s” to possessive forms of Texas (“Texas’s”).²¹⁷
- * When two or more words combine to modify a noun as an adjectival phrase, combine the words with a hyphen (“long-range plan”).²¹⁸ But never hyphenate a proper noun (“Royal Memorial Stadium field”).²¹⁹
- * Do not hyphenate a two-word adjectival phrase if the first word is the adverb, “very,” or any other adverb ending in “ly” (“very large shipment” or “heavily laden ship”).²²⁰
- * Do not hyphenate a three-word adjectival phrase if the first two words are adverbs (“very heavily laden ship”).²²¹
- * But do hyphenate an adjectival phrase that begins with “well” (“well-established facts”).²²²

K. A Few Recommendations

- * If you are one of the afflicted few who actually enjoy seeking out and perusing footnotes, have you ever been frustrated by the seeming inability to find the note anchor in the text because it’s so small it just blends into the overall print milieu? So, what I propose (and what I’ve utilized throughout this article) is making the note anchor in text one size larger and bold. Here, I’ve used 12-point font in text, but the note anchors are in bold, 13-point font. Similarly, while the footnote text itself is 10 point, I’ve made the note references 12 point and bold as

²¹² MUS at 4.

²¹³ See, e.g., THE NEW FOWLER’S MODERN ENGLISH USAGE 646 (3rd ed. 1996).

²¹⁴ BLUEBOOK at 68.

²¹⁵ *Id.* at 56.

²¹⁶ MUS at 1.

²¹⁷ *Id.* And really, is there any other form of Texas than a possessive one?

²¹⁸ *Id.* at 15.

²¹⁹ *Id.*

²²⁰ *Id.* at 17.

²²¹ *Id.*

²²² *Id.*

well. There’s no *real* manual that endorses this approach, but I submit it for your consideration nonetheless.

- *✱ Whenever I cite to legal periodicals where one of the authors is a judge or justice, I’ve taken to noting this by inserting “Hon.” before their name in the citation.²²³ Apart from judges and justices having earned their title, I cannot help but think that noting the author of a given point of law is or was a jurisprudential ninja may wind up being fractionally more persuasive.
- *✱ When citing to legal periodicals, I prefer to include both a season or month, along with the year, in the date parenthetical. This is not required by the *Bluebook* but takes up little space and provides a little added contour to the context of the citation itself.
- *✱ The final citation convention I employ is one I feel strongly about and hope to convince you to utilize as well. When short-citing a legal periodical, the *Bluebook* directs authors to use the author’s last name, along with a *supra* notation back to the footnote in which the source was first cited, as well as the page number referenced (“Posner, *supra* note 15, at 852”).²²⁴ This is asinine—not to mention profoundly unhelpful to the reader. It forces one’s audience to either physically flip back through the preceding pages or scroll upwards until the original footnote is located before the merit of the source can even be weighed. Instead, I recommend (and have used throughout herein) using a “hereinafter” notation after every secondary source you cite more than once, picking whichever approximation of the title is most likely to remind the reader of the source itself. In a subsequent short-cite, use the chosen

moniker for the source and include a short-form of the periodical citation akin to how case short-cites are treated. So,

Hon. Richard A. Posner, *The Bluebook Blues*, 120 YALE L.J. 850, 854 (2011) [hereinafter *Bluebook Blues*]

becomes:

Bluebook Blues, 120 YALE L.J. at 852.

Hopefully, this approach allows the reader to recall the source itself before they look it up, as well as enables them to copy the cite directly to their nearest electronic search engine. I leave it you to decide whether this short-cite form for a legal periodical actually has more utility than a *supra* cite, but my vote is with the former.

VIII. GOING FORWARD

After twenty some-odd pages of exposition, let me be clear that, at the end of the day, I recommend you utilize whatever citational, grammatical, and typographical strategy you deem best given your audience and your own preferences. Citation, although girded by long and sometimes fervently held dogma, remains more art than science. One of your primary aims as a legal writer is to avoid appearing uninformed so as to best persuade your reader. Earnest but not slavish attention to citational detail should be sufficient to accomplish this task.

²²³ See, e.g., *supra* notes 15, 18, 39, 96, 111.

²²⁴ BLUEBOOK at 158.

APPENDIX

PREDENTIAL ORDER OF CITATION..... **Tab A**
LIST OF USEFUL PRACTICE MATERIALS AND REFERENCE RESOURCES **Tab B**
TEXAS SUPREME COURT PRECEDENTIAL ERA TABLE..... **Tab C**
WRIT OF ERROR TABLE..... **Tab D**

TAB A²²⁵

²²⁵ See Dylan O. Drummond, *Citation Writ Large*, 20 APP. ADVOC. 89, 111 (Winter 2007).

PRECEDENTIAL ORDER OF CITATION

I. TEXAS SUPREME COURT EQUIVALENT

A. Authored majority opinions

✱ Jan. 1840 (Dallam 357) to
1867 (30 Tex. 374)

✱ 1871 (33 Tex. 585) to present

B. (per curiam)

C.1 Adopted or approved opinions of the Texas Commission of Appeals

✱ Feb. 9, 1881 to Aug. 31, 1892

✱ Apr. 3, 1918 to Aug. 24, 1945

C.2 (pet ref'd) (writ ref'd)

✱ June 14, 1927 to present

D. (Tex. Ct. App. 18__)

✱ Apr. 18, 1876 to Aug. 31, 1892

II. TEXAS COMMISSION OF APPEALS EQUIVALENT

A. (Tex. Comm'n App. 1___, holding approved)

✱ Feb. 9, 1881 to Aug. 31, 1892

✱ Apr. 3, 1918 to Aug. 24, 1945

B. (Tex. Comm'n App. 1___, judgment adopted)

✱ Feb. 9, 1881 to Aug. 31, 1892

✱ Apr. 3, 1918 to Aug. 24, 1945

(Tex. Comm'n App. 1___, judgment approved)

✱ Feb. 9, 1881 to Aug. 31, 1892

✱ Apr. 3, 1918 to Aug. 24, 1945

(Tex. Comm'n App. 1___, judgment affirmed)

✱ Feb. 9, 1881 to Aug. 31, 1892

✱ Apr. 3, 1918 to Aug. 24, 1945

III. INTERMEDIATE APPELLATE COURT EQUIVALENT

A. (writ ref'd) (writ denied)

✱ Before Feb. 20, 1916

(writ dismissed) (writ dismissed w.o.j.)

✱ Sept. 1, 1892 to June 30, 1917

✱ June 14, 1927 to June 19, 1987

(writ ref'd n.r.e.)

✱ Before June 20, 1987

(writ dismissed judgment corrected)

(writ ref'd w.o.m.)

B. (writ ref'd)

✱ Feb. 20, 1916 to June 13, 1927

(writ ref'd n.r.e.)

✱ June 20, 1987 to Dec. 31, 1987

(writ denied)

✱ Jan. 1, 1988 to Aug. 31, 1997

(writ dismissed by agreement)

(writ dismissed)

(writ granted w.r.m.)

(petition denied)

(petition struck)

(petition dismissed)

(petition granted, judgment vacated w.r.m.)

(petition dismissed by agreement)

(petition dismissed w.o.j.)

(petition withdrawn)

(petition abated)

(petition filed)

C. Published (mem. op.)

✱ Sept. 1, 1941 to Aug. 31, 1986

✱ Sept. 1, 1997 to present

D. *holding approved per curiam / holding disapproved per curiam / reasoning disapproved per curiam*

IV. NON-PRECEDENTIAL IN APPELLATE COURTS

A. (Tex. Comm'n App. 18__)

✱ Oct. 7, 1879 to Feb. 8, 1881

B. (not designated for publication)

✱ Before Jan. 1, 2003

C. (___ Dist. Ct., ___ Cnty., [date]) (Cnty. Ct. at Law No. ___, ___ Cnty., [date])

D. (___, J., dissenting from denial of review) (___, J., dissenting from denial of application for writ of error)

TAB B

LIST OF USEFUL PRACTICE MATERIALS AND REFERENCE RESOURCES

PRACTICE MATERIALS

** BLACK’S LAW DICTIONARY (9th ed. 2010)

- or -

** BLACK’S LAW DICTIONARY (9th ed. for iPhone/iPad/iPod Touch 2011)

** THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass’n et al. eds., 19th ed. 2010)

- or -

** THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass’n et al. eds., 19th ed. for *rulebook*TM 2011)

** MATTHEW BUTTERICK, *TYPOGRAPHY FOR LAWYERS: ESSENTIAL TOOLS FOR POLISHED & PERSUASIVE DOCUMENTS* (Jones McClure Publ’g 2010)

** THE GREENBOOK: TEXAS RULES OF FORM (Texas Law Review et al. eds., 12th ed. 2010)

** MANUAL ON USAGE AND STYLE (Texas Law Review et al. eds., 12th ed. 2011)

REFERENCE RESOURCES

** Dylan O. Drummond, *Citation Writ Large*, 20 APP. ADVOC. 89 (Winter 2007)

** ROBERT B. DUBOSE, *LEGAL WRITING FOR THE REWIRED BRAIN: PERSUADING READERS IN A PAPERLESS WORLD* (Tex. Law. Books 2010)

** Wendell Hall et al., *Hall’s Standards of Review in Texas*, 42 ST. MARY’S L.J. 3 (2010)

** Hon. David Hittner & Lynne Liberato, *Summary Judgments in Texas*, 47 S. TEX. L. REV. 409 (Spring 2006)

** Lynne Liberato & Kent Rutter, *Reasons for Reversal in the Texas Courts of Appeals*, 48 HOUS. L. REV. 993 (Winter 2012)

** Jim Paulsen & James Hambleton, *Confederates & Carpetbaggers: The Precedential Value of Decisions from the Civil War and Reconstruction Era*, 51 TEX. B.J. 916 (Oct. 1988)

** Hon. Richard A. Posner, *The Bluebook Blues*, 120 YALE L.J. 850, 855-56 (2011), available at <http://www.yalelawjournal.org/images/pdfs/940.pdf> (last visited Mar. 25, 2013) (I add this parallel internet citation because the typographic conventions employed by Judge Posner in the 2-page citation manual he provides to his clerks, which are included in his article at Appendix 2, are not reproduced in either the electronic *Westlaw* or *Lexis* copies of the article)

** Hon. Ted Z. Robertson & James W. Paulsen, *The Meaning (If Any) of an “N.R.E.”*, 48 TEX. B.J. 1306 (Dec. 1985)

** Hon. Ted Z. Robertson & James W. Paulsen, *Rethinking the Texas Writ of Error System*, 17 TEX. TECH. L. REV. 1 (1986).

** Hon. Gordon Simpson, *Notations on Applications for Writ of Error*, 12 TEX. B.J. 547 (Dec. 1949)

** Hon. Zollie Steakley, *What the Heck in Two Respects*, 30 TEX. B.J. 697 (Sept. 1967)

** THOMSON REUTERS, 2012 TEXAS SUBSEQUENT HISTORY TABLE (West 2012)

TAB C²²⁶

²²⁶ Jim Paulsen & James Hambleton, *Confederates & Carpetbaggers: The Precedential Value of Decisions from the Civil War and Reconstruction Era*, 51 TEX. B.J. 916, 920 (Oct. 1988).

TEXAS SUPREME COURT PRECEDENTIAL ERA TABLE

Precedential Weight of Civil War And Reconstruction Decisions		
Court	Volumes	Weight
Civil War Court (1861-1865)	26 and 27 Tex. ¹	Fully precedential
Presidential Reconstruction (1866-1867)	28 Tex. through 30 Tex. 374 ²	Fully precedential
Military Court (1867-1870)	30 Tex. 375- 33 Tex. 584	Not precedential, but sometimes respected
Semicolon Court (1870-1873)	33 Tex. 585 ³ through 39 Tex.	Precedential, but sometimes not respected

TAB D²²⁷

²²⁷ Hon. Gordon Simpson, *Notations on Applications for Writ of Error*, 12 TEX. B.J. 547, 574–75 (Dec. 1949).

WRIT OF ERROR TABLE

Notation	Date ¹	Statute or Rule Defining Notation	Meaning
Refused	Sept. 1, 1892 to June 14, 1927	None. Cf. Acts 1892, 1st C. S., Ch. 14, p. 20; Art. 943, R. S. 1895; Art. 1544, R. S. 1911; Art. 1746, R. S. 1925.	Supreme Court approved result reached by C. C. A. but did not necessarily approve opinion. <i>Brackenridge v. Cobb</i> , 85 Tex. 448, 21 S. W. 1034; <i>Fleming v. Texas Loan Agency</i> , 87 Tex. 238, 27 S. W. 126. Refusal might not even mean approval of result reached, where error was not preserved and presented to Supreme Court. See <i>Terrell v. Middleton</i> , 103 Tex. 14, 17, 191 S. W. 1138, 1139; <i>City of San Angelo v. Deutsch</i> , 126 Tex. 532, 540, 91 S. W. 2d 308, 312.
	June 14, 1927 to present	Acts 1927, Reg. Sess., ch. 144, p. 214, amend- ing Art. 1728, R. S. 1925; Rule 483, Texas Rules of Civil Proceed- ure.	Judgment of C. C. A. correct and principles of law declared in opinion correctly determined. <i>Hamilton v. Empire Gas & Fuel Co.</i> , 134 Tex. 377, 383, 110 S. W. 2d 561, 565; <i>Ohler v. Trinity Portland Cement Co.</i> , Tex. Civ. App., 181 S. W. 2d 120, 123.
Refused for Want of Merit; Ref. Want Merit; Ref. W. M.	Sept. 1, 1941 to Feb. 1, 1946	Rule 483, Texas Rules of Civil Procedure.	Judgment of C. C. A. correct but Supreme Court not satisfied that opinion in all respects has correctly declared the law.
Refused. No Rever- sible Error. Ref. N. R. E.	Feb. 1, 1946 to present	Rule 483, Texas Rules of Civil Procedure.	Supreme Court not satisfied that opinion of C. C. A. in all respects has correctly declared the law, but is of the opinion that the application presents no error which requires reversal.

¹Date of Supreme Court's action on the application. See tables of cases reviewed, published in the Texas Reports, for exact date of action.

Notation	Date	Statute or Rule Defining Notation	Meaning
Dismissed; Dismissed for Want of Jurisdiction; Dismissed WOJ	Sept. 1, 1892 to July 1, 1917 ²	None. Cf. Acts 1892, 1st C. S., ch. 15, §5, p. 26; Art. 996, R. S. 1895; Art. 1591, R. S. 1911; Acts 1892, 1st C. S., ch. 14, p. 20; Art. 940, R. S. 1895; Art. 1521, R. S. 1911, and amend- ing acts.	Lack of jurisdiction in Supreme Court to consider application. Examples: jurisdiction final in C. C. A., <i>Burnett v. Powell</i> , 86 Tex. 382, 24 S. W. 788, 25 S. W. 17 (boundary suit), <i>Gulf, C. & S. F. R. Co. v. Buford</i> , 85 Tex. 430, 21 S. W. 678 (amount in contro- versy), <i>Meade v. Leon & H. Blum Land Co.</i> , 85 Tex. 513, 22 S. W. 514 (question of fact); defective application, <i>Homes v. City of Henrietta</i> , 91 Tex. 318, 42 S. W. 1052; application filed too late, <i>Schleicher v. Runge</i> , 90 Tex. 456, 39 S. W. 279; subject matter of controversy has ceased to exist, <i>Robinson v. State</i> , 87 Tex. 562, 29 S. W. 649; judgment of C. C. A. not one which "practically settles the case", <i>Gulf, C. & S. F. R. Co. v. Riordan</i> , 85 Tex. 511, 22 S. W. 514 (1892-1913).
	July 1, 1917 ² to June 14, 1927	Cf. Art. 1591, R. S. 1911, and Acts 1917, Reg. Sess., ch. 75, p. 141, amending Art. 1521, R. S. 1911; Arts. 1728 and 1821, R. S. 1925.	Same as above, except extended to include cases otherwise within jurisdiction of Su- preme Court where error committed, if any, was not "of such importance to the juris- prudence of the State as in the opinion of the Supreme Court required correction." <i>Decker v. Kerlicks</i> , 110 Tex. 90, 95, 216 S. W. 385, 386; <i>National Compress Co. v. Hamlin</i> , 114 Tex. 375, 385, 269 S. W. 1024, 1028.
	June 14, 1927 to March 1, 1939	Acts 1927, ch. 144, p. 214, amending Art. 1728, R. S. 1925; Art. 1821, R. S. 1925.	(1) Lack of jurisdiction in Supreme Court to consider application. See examples above. (2) In cases within jurisdiction of Supreme Court, judgment correct but Supreme Court not satisfied that opinion of C. C. A. in all respects has correctly declared the law. <i>Bain Peanut Co. of Texas v. Pinson & Guyer</i> , 119 Tex. 572, 574, 34 S. W. 2d 1090, 1091. (Cf. "Refused" prior to 1927.)
	March 1, 1939 to present	Supreme Court Rule 5a, 131 Tex. v; Rule 483, Texas Rules of Civil Procedure.	Lack of jurisdiction in Supreme Court to consider application. See examples above. <i>Wood v. Bankers Life & Loan Ass'n of Dallas</i> , 132 Tex. 505, 125 S. W. 2d 262.
Dismissed for Want of Jurisdiction— Correct Judgment; Dismissed, WOJ— Correct Judgment; Dism. Judgm. Cor.	March 1, 1939 to Sept. 1, 1941	Supreme Court Rule 5a, 131 Tex. v.	In cases within jurisdiction of Supreme Court, judgment correct but Supreme Court not satisfied that opinion of C. C. A. in all respects has correctly declared the law. <i>Republic Ins. Co. v. Highland Park Ind. Sch. Dist.</i> , 133 Tex. 545, 125 S. W. 2d 270.

²The 1917 act provided that it should become effective on July 1, 1917, but that it should not affect business before the Supreme Court at that time. Records in the clerk's office indicate that applications filed after July 1, 1917, were not acted on by the Supreme Court until after January 1, 1919.

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