1997

Do Judges Read the *Review*? A Citation-Counting Study of the *Nebraska Law Review* and the Nebraska Supreme Court, 1972–1996

Richard G. Kopf

*District of Nebraska and University of Nebraska College of Law*

Follow this and additional works at: [https://digitalcommons.unl.edu/nlr](https://digitalcommons.unl.edu/nlr)

Recommended Citation


This Article is brought to you for free and open access by the Law, College of at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Nebraska Law Review by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.
Richard G. Kopf*

Do Judges Read the Review? A Citation-Counting Study of the Nebraska Law Review and the Nebraska Supreme Court, 1972-1996

TABLE OF CONTENTS
I. Background ........................................... 710
   A. Citation-Counting Studies ........................ 710
      1. An Overview .................................. 710
      2. Five Caveats from Other Studies ............... 713
      3. Eight Findings from Other Studies .............. 714
   B. Methodology ...................................... 716
II. Results ............................................. 720
   A. Basic Facts ..................................... 720
      1. Nebraska Law Review .......................... 720
         a. Highlights .................................. 720
         b. Tables ..................................... 721
      2. Creighton Law Review .......................... 721
         a. Highlights .................................. 721
         b. Tables ..................................... 723
   B. Authors .......................................... 723
      1. Nebraska Law Review .......................... 723
         a. Highlights .................................. 723
         b. Tables ..................................... 723
      2. Creighton Law Review .......................... 724
         a. Highlights .................................. 724
         b. Tables ..................................... 724
   C. Subject Matter ................................... 725

© Copyright held by the Nebraska Law Review.
* United States district judge for the District of Nebraska and Lecturer, University of Nebraska College of Law. University of Nebraska at Kearney, B.A., 1969; University of Nebraska College of Law, J.D., 1972; Executive Editor, Nebraska Law Review. The author is grateful to Kelli Francis-Svensson, University of Nebraska College of Law, Class of 1997, for her excellent research assistance.
The seventy-fifth anniversary of the *Nebraska Law Review*\(^1\) [hereinafter *Review*] provides an opportunity to ask whether or not all the effort that goes into publishing the *Review* is worthwhile.\(^2\) One way to gauge the value of the *Review* is to study its influence on judges. By analyzing the frequency with which the Nebraska Supreme Court has cited the *Review* over the last twenty-five years, this Article attempts to decide whether the *Review* influences judicial opinion writing. In the following discussion, we explain what we did and what we discovered. We then make judgments about the present value of the *Review* to the judiciary as measured by its impact (or lack

---

1. Volume 1 of the *Review* (then known as the *Nebraska Law Bulletin*) was published in July 1922, and the first article, which dealt with real estate, was written by Henry H. Foster, Professor of Law at the University of Nebraska. See Henry H. Foster, *The Law of Covenants for Title in Nebraska*, 1 Neb. L. Bull. 5 (1922). Volume 75 concluded with an essay on clinical legal education written by Steven Lubet, Professor of Law at Northwestern University. See Steven Lubet, *Lessons from Petticoat Lane*, 75 Neb. L. Rev. 916 (1996).

2. As they spend their days and nights laboring over articles, law review members ask this question frequently. See, e.g., Bart Sloan, *Note, What Are We Writing For? Student Works as Authority and Their Citation by the Federal Bench*, 1986-1990, 61 Geo. Wash. L. Rev. 221 (1992).
thereof) on opinions written by the Nebraska Supreme Court. Lastly, we make a recommendation regarding the creation of an editorial “partnership” between the Review and the Nebraska judiciary.

I. BACKGROUND

As an introductory matter, we present a brief survey of the literature on citation studies. After that, we provide an explanation of the methodology used to complete this study.

A. Citation-Counting Studies

1. An Overview

Quantitative analyses of law review use, which often center upon the number of times authors refer (cite) to law review articles, have become the subject of intense interest at law schools. Without self-consciousness, one law review devoted an entire issue to the subject. Academics debate the value of quantitative studies on law review use. This debate reflects “the continuing tension in legal education resulting from two conflicting definitions of the enterprise.”

On one hand, we may properly see legal education as “professional training.” If the purpose of legal education overall, and of legal scholarship in particular, is professional in nature, it follows that law reviews ought to reflect attention to professional concerns. In turn, law reviews are properly measured by whether or not professionals, such as judges, use them. If we accept such a measuring stick as valid, “[c]itation studies demonstrate that legal scholarship makes only a modest direct contribution to the daily practice of law. Thus, the time has come to acknowledge that legal scholarship is overwhelmingly an academic endeavor of little immediate perceived value to the rest of the profession.”

3. For purposes of this Article, a “law review” is defined as (1) a publication sponsored by a law school (2) dealing with legal subjects (3) frequently, but not always, edited by law students. For the history of law reviews and the “waves” of criticism that have followed them, see Bernard J. Hibbitts, Last Writes? Reassessing the Law Review in the Age of Cyberspace, 71 N.Y.U. L. REV. 615, 617-54 (1996).
7. Id.
8. Id. at 1056-57.
The contrary view is that legal education is properly "an academic endeavor." If this view prevails, we frequently judge law reviews more generously (and not quantitatively). For such individuals, quantitative studies are irrelevant or misleading. In their view, "[l]egal knowledge, like most other kinds of learning, is a social construct," and the law review is the "means by which legal ideas and meaning are created, debated, and disseminated." Thus, studying whether professionals use law reviews is meaningless since "good' scholarship" is valuable whether or not it appeals to the "existing hierarchies."

We believe that law reviews should appeal to professionals since law schools, and the law reviews they publish, train professionals and not solely academics. Thus, our view is that quantitative approaches to the study of law review use are helpful. Knowing whether or not judges and lawyers rely upon law reviews is valuable because such reliance—the "conventional criteria of theory-acceptance"—is one reasonable way, among many, to decide whether legal ideas (and, by extension, law reviews) have merit. As a student author of a law review article correctly put it, "[w]ithout objective means of examining the benefits each party receives from the law review process, few precise conclusions may be drawn concerning the reviews' impact."

When a quantitative approach is used, we can begin by "counting cites." Using this method, we can analyze whether law reviews have significance to other legal periodicals, the courts, or both legal periodicals and the courts by determining the frequency with which other authors refer to law review articles. In particular, from the fre-

9. Id. at 1056.
10. Stefanic & Shapiro, supra note 5, at 743.
11. Id. at 747.
12. See Deborah J. Merritt & Melanie Putnam, Judges and Scholars: Do Courts and Scholarly Journals Cite the Same Law Review Articles?, 71 CHI.-KENT L. REV. 871 (1996) (providing a particularly thoughtful and useful quantitative study comparing the law review citation practices of judges and academics). For humorous, but apt proof of the value of quantitative reasoning in what is perhaps the most subjective area of all, French wines, see Jay Palmer, Grape Expectations, BAR-RON'S, Dec. 30, 1996, at 17. In that article, the author observes, much to the dismay of wine experts, that by the use of a simple quantitative assessment of rain and temperature, a Princeton University economist accurately predicts the quality and taste of French wine before the first glass is consumed. Id. at 17-18.
13. Stefanic & Shapiro, supra note 5, at 747.
15. Id.
16. Sirico & Drew, supra note 6, at 1051 n.1 (collecting studies).
17. Id. at 1051 n.2 (collecting studies). See also Sloan, supra note 2, at 223 n.14 (collecting studies).
18. Merritt & Putnam, supra note 12, at 871. See also Sirico & Drew, supra note 6, at 1051 n.2 (collecting studies).
quency of law review citations we can derive "insight into how useful the[ ] courts find legal scholarship."

We can extend citation-counting studies beyond measuring the mere frequency of citations to law review articles. For example, we can examine the subject matter of the law reviews cited, whether the law reviews are cited in majority, concurring, or dissenting judicial opinions, whether certain judges cite law reviews more frequently than others, and whether the authors of the cited law reviews are students, professors, judges, or practitioners.

Although more difficult, we also can try to decide objectively if a law review article significantly influenced the writer who cited the article. For example, we can attempt objectively to determine: (1) whether the article was cited as the sole authority; (2) whether the article was cited for a proposition that was important to the holding of the case; (3) whether the "introductory signal" (such as "see") was weak or strong; (4) whether the article was quoted and, if so, the placement of the quotation; and (5) whether other courts cited the opinion that relies upon the law review article as authority.

With the arrival of computer-assisted research, we are able efficiently to study large data collections consisting of legal periodicals and judicial opinions. For the study of law review usage in judicial opinions, a common technique is to find a citation to a review by using a computer-based service such as LEXIS or Westlaw. Using this method, we select a database of judicial opinions and then enter the name of a law review as a search term. This method also allows the investigator to search specific time periods.

19. Sirico & Drew, supra note 6, at 1051.
20. See, e.g., Merritt & Putnam, supra note 12, at 882-86 (comparing the subject matter of law review articles cited in legal periodicals with the subject matter of law review articles cited by courts and finding little similarity).
21. See, e.g., William H. Manz, The Citation Practices of the New York Court of Appeals, 1850-1993, 43 BUFF. L. REV. 121, 125-27 (1995)(counting the number of all types of citations in majority, concurring, dissenting, and per curiam opinions).
22. Id. at 146-48 (counting the number of citations per judge and discussing, for example, the citation practices of Judge Cardozo).
23. Merritt & Putnam, supra note 12, at 890-94 (examining the background of authors on "top ten" lists); Sloan, supra note 2, at 232-39 (examining the frequency with which federal courts cited student-authored law review articles).
25. Id.
27. Care must be taken to account "for the various ways that a journal citation might appear in print." Sirico & Margulies, supra note 26, at 132 n.3.
28. Id. at 131-32.
2. **Five Caveats from Other Studies**

Most quantitative studies of the use of law review articles properly recite various caveats regarding the utility of the research. For purposes of studying the impact of the Review on judicial opinions, five such limitations are the most salient.

First, we must not imply statistical significance where none exists or when we have not attempted to decide whether statistical significance is present. A study can be empirically based but lack statistical significance; that is, the data derived from a citation-counting study may or may not be the product of chance. Drawing inferences from comparisons of small numbers is particularly problematic, and citation-counting studies frequently suffer from such problems.

Second, citation counting as a methodology also may “underestimate the impact of legal scholarship on the courts, as judges often fail to cite journal articles that they have used as a basis for their reasoning.” Moreover, judges may be influenced by a law review article without realizing the source of the influence. Simply put, empirical studies based upon citation counts are “an extremely crude method of measuring the impact of academic work on the decision-making process.”

Third, citation-counting studies that exclusively use appellate judicial opinions understate the value of law reviews to various other professional groups. “The articles most frequently cited by appellate judges may differ from the sources trial judges, courtroom litigators, corporate counsels, and other members of the practicing bar find most useful.”

Fourth, we should not necessarily draw negative conclusions about the value of secondary source material such as law reviews simply because judges may refer less frequently to secondary material than they do to primary source material. Although both primary author-

---

29. Merritt & Putnam, *supra* note 12, at 890 n.80 (discussing "statistical significance" and stating that "social scientists treat relationships that have a probability of resulting from chance that is five percent or less as 'statistically significant'").

30. *Id.* at 896 n.101 (discussing a percentage difference regarding the sex of certain authors and suggesting the lack of statistical significance might be due to the small population size).

31. *Id.* at 896 & n.101 (suggesting lack of statistical significance with comparisons of 13 units out of 31 units, 7 units out of 29 units, and 10 units out of 44 units).

32. Sloan, *supra* note 2, at 229 n.42.

33. *Id.* at 229 n.43 (quoting Wade H. McCree, Jr., *Partners in a Process: The Academy and the Courts*, 37 WASH. & LEE L. REV. 1041, 1043 (1980)(footnote omitted)).


35. *Id.*

36. *Id.* at 898 ("Law professors are freer than judges to step outside the legal system, to examine the fundamental premises of that system, and to propose changes...")
ity (cases, statutes, and the like) and secondary authority (law reviews, treatises, and the like) may properly be considered "authoritative," for judges, "statutes and cases are more authoritative than other legal and nonlegal writing." Therefore, we should not be surprised that a judge will cite source material that is the "more authoritative" when that material is available.

Fifth, law reviews have value whether courts use them or ignore them. For example, law reviews provide a unique educational opportunity for law students to sharpen their research, writing, and analytical skills. Law reviews also have other worthwhile uses, such as giving law professors a "valuable means of disseminating their ideas" to other academics. None of these values are dependent upon whether or not judges cite (or read) law reviews.

3. Eight Findings from Other Studies

To better understand the results and conclusions that follow, we next summarize what others have found when they studied whether, and to what extent, judges refer to law review articles in their opinions. An analysis of the literature suggests eight findings that are relevant here.

First, the research consistently proves that judges seldom cite law review articles. For example, one study of the New York Court of Appeals showed that although the judges cited an average of 11.5 sources for each majority opinion, they cited an average of only .39 law review articles in the text of such opinions. Using a statistical estimating technique, another study found that between .74% and
1.24% of federal district court, court of appeals, and Supreme Court opinions contained citations to student-authored law review articles. Yet another study found that more than 90% of federal appeals court opinions cited no law review articles.

Second, when judges use secondary sources, they are much more likely to cite a treatise by a well-known author than a law review article. For example, state and federal courts cited Professor LaFave's treatise on search and seizure more than 1700 times during one study period, while "the most-cited" law review article was referred to by judges only forty-five times during that same period.

Third, if a judge cites a law review article, the citation is likely to be to an "elite" law review rather than a "nonelite" law review. Nevertheless, "elites" do not dominate, and "regional" or "local" law reviews consistently show up on "most cited" lists. Compared to law professors, judges are much more willing to use the work of students, lawyers, other judges, and authors from other disciplines.

Fourth, except for statutory interpretation and constitutional law, the subjects addressed in law reviews used by courts are quite different from the topics of interest to law professors. Judicial citations to law review articles on civil procedure, evidence, and criminal law dominated one study of judicial citations. Sex or race discrimination articles garnered little judicial interest in that same study.

Fifth, articles on state law issues can generate significant judicial interest. For example, in one recent inquiry, five out of thirty of the "most cited" articles by judges dealt with Texas law. Thus, the "state courts constitute an important audience for scholarly articles."

Sixth, when citing law review articles, a judge most often will cite relatively recent law review articles. For example, in one study, nearly 60% of the law review citations were to works more than one year old but less than five years old.

44. Sloan, supra note 2, at 230-31 & n.47.
45. Sirico & Drew, supra note 6, at 1052 & n.6. It is worth noting that among all federal courts, the United States Supreme Court is by far the most likely to cite law review articles. Id. at 1052-53 & n.9.
46. Merritt & Putnam, supra note 12, at 873 n.6. See also Manz, supra note 21, at 137-39.
47. Sirico & Drew, supra note 6, at 1054-55.
48. Manz, supra note 21, at 141; Merritt & Putnam, supra note 12, at 888-90.
49. Merritt & Putnam, supra note 12, at 891.
50. Id. at 884-85.
51. Id. at 884.
52. Id. at 885-84.
53. Id. at 885-86.
54. Id. at 886.
55. Sirico & Drew, supra note 6, at 1055-56.
Seventh, the citation practices of judges are variable.57 Some judges seldom cite law review articles, while others are much more likely to refer to them.58

Eighth, when an opinion writer cites a law review, the article is not likely to influence the court's holding.59 As one commentator observed, while courts generally have "accepted law review material as a legitimate source of authority," one should not conclude that "law review authors greatly influence the court's opinions, since many of the citations are perfunctory."60

B. Methodology

A law review article has the potential to influence a court on dispositive issues.61 Moreover, one law review article can influence multiple courts. For example, according to one study, the Review published the article most frequently cited (and inferentially the most influential) by the courts of the United States.62

If the Review published one very judicially influential law review article, we may reasonably wonder about the Review's influence on judicial thinking over an extended period. What follows is a description of the method used to probe this question.

To explain the methodology employed in this study, seven points require elaboration. The following points explain the methodology:

57. Manz, supra note 21, at 139-40.
58. Id. at 164-79 app.
59. Sloan, supra note 2, at 251 (stating "[t]he study results strongly suggest that student work, even if authoritative, is rarely cited by federal courts and, when cited, has little effect on a court's holding").
60. Manz, supra note 21, at 141 & n.94.
62. Merritt & Putnam, supra note 12, at 876 & n.22 & tbl.1 (observing that for all law review articles published between 1989 and 1991, a Review article that received 45 citations was the "most frequently cited by the courts" (citing John E.B. Myers et al., Expert Testimony in Child Sexual Abuse Litigation, 68 NEB. L. REV. 1 (1989))). (The Author takes a certain vicarious, but unjustified, pride in this "most cited" accomplishment because the Editor-in-Chief of the Review for the Myers article was Janine E. Rempe, a career law clerk in the Author's chambers.) The Nebraska Supreme Court was not one of the 45 courts that cited this article, but the Eighth Circuit was. Compare infra app. A, tbls.1-2, with app. F, tbl.17 (Nebraska at item 6).
(1) the hypothesis; (2) why the Nebraska Supreme Court was chosen; (3) the comparative aspects of the study; (4) what database was used and what search mechanisms were employed; (5) the time of the study; (6) the quantitative aspects of the inquiry; and (7) the qualitative aspects of the inquiry.

A hypothesis, born out of this Author's experience as a judge and confirmed by the literature search discussed earlier, motivated this study. This Author posited that over the last twenty-five years, the Review had little apparent impact upon published judicial opinions, whether measured quantitatively or qualitatively. To test this hypothesis, both a quantitative and a qualitative assessment would be required.

Next, the Nebraska Supreme Court was chosen as the testing ground because we assumed that of all the state and federal courts, the Nebraska Supreme Court, situated in the home state of the Review, would be the court most likely to cite to the Review in published opinions having precedential value. Consequently, we believed that the Nebraska Supreme Court would provide the best test of the hypothesis. In other words, if the Review had little impact upon published opinions of the Nebraska Supreme Court, it is unlikely that the Review would have a greater impact upon another precedent-making court.

To have a basis for comparison, finding another law review against which to measure the Review's influence was necessary. The Creighton Law Review was chosen. The Creighton Law Review serves as an appropriate point of comparison because it is published by the only other law school in Nebraska. Moreover, some consider the Creighton University School of Law to be a peer of the University of Nebraska College of Law.

63. The Nebraska Supreme Court is Nebraska's highest court. Neb. Const. art. V, § 1. The court has seven members. Id. § 2.

64. Nebraska did not have an intermediate appellate court until June 1991. Neb. Rev. Stat. §§ 24-1101 to -1109 (Reissue 1995). After the intermediate appellate court was created, the Nebraska Supreme Court ruled that the intermediate court had no precedent-making authority. Metro Renovation v. Department of Labor, 249 Neb. 337, 343, 543 N.W.2d 715, 721 (1996)(per curiam). It was not until 1997 that the Nebraska Supreme Court adopted a rule allowing the Nebraska Court of Appeals to create precedent under certain circumstances. Neb. Ct. R. Prac. 2(E) (Apr. 30, 1997), reprinted in 252 Neb. at i (1997).

65. As will be seen later, for certain purposes the United States Court of Appeals for the Eighth Circuit was also studied. See infra subsection II.A.2.a, n.77, & app. F, tbl.17. Nebraska is a part of the Eighth Circuit.

66. Cf. Ted Gest, News You Can Use; 1997 Annual Guide; Best Graduate Schools, U.S. News & World Rep., Mar. 10, 1997 (as corrected), available in 1997 WL 8331699. In that magazine article, law schools are ranked according to four tiers, with the first tier being the "best." Id. at *5-17. Various measures are used, including reputation rankings by professionals (judges and lawyers) and by law professors. Id. at *18-19. Overall, the University of Nebraska College of Law is
The period of the study—published opinions of the Nebraska Supreme Court from January 1, 1972 through December 31, 1996—was selected for two reasons. Initially, the twenty-five year time span provided a large enough, relatively recent database from which generalizations regarding the Review’s impact upon judicial thinking could fairly be derived. Furthermore, since the Creighton Law Review was chosen as a point of comparison and that journal was first published in 1968, a date before 1972 would have provided insufficient time for the Creighton Law Review to influence the Nebraska Supreme Court.

The Westlaw database was chosen to study the opinions of the Nebraska Supreme Court. Search queries, using the “terms and connectors” method, were employed to extract citations by the Nebraska Supreme Court to the Review and the Creighton Law Review. A date “before” and “after” was used to limit the search to the desired time frame.

Once published opinions were found that cited either the Review or the Creighton Law Review, we read the cases. We also read the law review articles cited in the cases. After that, and for each case, a “data sheet” was prepared. The data sheet was then used to compile quantitative and qualitative information about each case and the law review article cited by the case.

The quantitative aspects of the data collection effort included the following work. Initially, we recorded the name of the case, the date, ranked a “second tier” law school, id. at *12, while the Creighton University School of Law is ranked a “third tier” law school. Id. In the reputation study, professionals ranked the two schools about the same, id. at col.B., while academicians ranked the University of Nebraska College of Law substantially higher (better), id. at col.A.

68. As noted earlier, the research shows that most law review articles cited by judges have an age of more than one year, but less than five years. See supra text accompanying note 56.
69. Care was taken to account for the various ways a law review can be cited. Using the Westlaw database “NE-CS,” the following query for the Nebraska Law Review was used: DA(AFT 1/1/72) & DA(BEF 1/1/97) & “NEBRASKA LAW REVIEW” “NEB.L.R.” “NEB.L.REV.” “NEB. L.R.” “NEB. L.REV.” “NEB. L. REV.” “NEB. L. REV.” & CO(HIGH). Using the same database, the following query for the Creighton Law Review was used: DA(AFT 1/1/72) & DA(BEF 1/1/97) & “CREIGHTON LAW REVIEW” “CREIGHTON L.R.” “CREIGHTON L.REV.” “CREIGHTON L. REV.” & CO(HIGH). This query omitted reference to the Nebraska Law Bulletin. The Bulletin became the Review in 1941. See Lester B. Orfield & George H. Turner, An Old Friend Under a New Name and in a New Garb, 20 NEBR. L. REV. at vi (1941). Articles appearing in the Bulletin were not likely to be cited with any frequency during the study period. See supra text accompanying note 56. Joel J. Agena, University of Nebraska College of Law, Class of 1997, and a member of the Review, conceived and drafted the queries. Mr. Agena’s assistance is gratefully acknowledged.
70. The data sheets are available from the Author.
and citation information to the official and Northwest reporters. Then we recorded the page where the law review article was cited.

Next, both the name of the judge who wrote the opinion and the law school affiliation of the judge were determined and recorded. If the opinion was unsigned, we recorded such information also. We then recorded the nature of the opinion; that is, we recorded whether the opinion was a majority opinion, a concurring opinion, or a dissenting opinion.

After that, we "typed" the opinion; that is, we decided whether it was civil or criminal in nature. We conducted a further opinion-typing effort using the "West Key Number" system when possible. Here we determined the "key number" description for the "headnote" under which the law review article appeared.71 For example, if the article appeared under a "pleading" headnote, the opinion was coded a "pleading" opinion.

For each law review article cited by a particular opinion, we noted the author, title, volume, page, and date. Then we discovered from the article the employment status of each author at the time of publication; that is, we decided whether a particular author was a law student, a law professor, or a professional, such as a judge or a lawyer.72 If the author did not fit any of these three categories, then the author was coded "other."

Later, we read the law review article to determine its subject matter. We then prepared a short subject description and placed it on the data sheet. We then used this subject description with the previously coded "key number" classification to arrive at a combined subject matter classification for each opinion and article.

We also conducted an "aging" analysis for each article. This was done by measuring the time span between the date a law review article was published and cited. We then computed averages.

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

---

71. In some cases, law review articles would be cited in the text of an opinion for which neither a headnote nor key number was given. In such a case, no further effort was made to type the opinion according to key number.

72. For purposes of comparison, the employment status of the first named author was used for articles written by more than one person.
article when resolving the issue for which the article was cited, the article was listed as having a major influence on the writer ("significant influence"). We then recorded the results.

We believe these criteria are simple and objective methods of assessing a law review article's relative impact upon a judge. Nevertheless, the last two criteria—"cited and discussed" (moderate influence) and "cited, discussed, and followed for the proposition cited" (significant influence)—may overstate influence. Although we could give others, the following examples illustrate this point.

Example One: We treated a law review article that was discussed but not followed as having moderate influence on the opinion writer. Some would argue that the article had no influence because the writer did not follow the article. The Author of this Article, however, chose to treat the decision of an opinion writer to discuss, but not follow, the premise of an article as having "moderate influence." This was done on the assumption that if the opinion writer felt obligated to discuss the article, its significance to the writer was more than that of another article that warranted only a perfunctory citation without discussion.

Example Two: On the "significant influence" scale, we treated a law review article as having significant influence even if the article was cited in support of a point that was not case dispositive. Thus, if a law review article was cited, discussed, and followed on a minor issue, we treated the article as having significantly influenced the opinion writer. We chose to treat such influence as "significant" on the assumption that the opinion writer would not have explicitly resolved even a minor issue in his opinion unless the issue was necessary to a fair disposition of the matter.

II. RESULTS

As in any study, we could categorize and thus explain the results in many ways. In our view, the following categories best explain the results: (1) basic facts; (2) authors; (3) subject matter; (4) judges and opinions; and (5) influence. Each category is discussed first in relationship to the Review and then in relationship to the Creighton Law Review. For each category and each law review, we highlight the results and present the important data in tables.

A. Basic Facts

1. Nebraska Law Review

   a. Highlights

   The Nebraska Supreme Court issued 8935 published opinions between January 1, 1972 and December 31, 1996.73 During that time,
the Nebraska Supreme Court issued twenty-six civil opinions and nine criminal opinions in which the court cited to thirty-seven different articles from the Review.

In other words, during a twenty-five-year time span, the Nebraska Supreme Court cited the Review in thirty-five different cases using thirty-seven different Review articles in the process. About 74% (26) of the cases citing the Review were civil cases, and 26% (9) of the cases were criminal cases. The total number of citations (35) to the Review amounts to substantially less than 1% (.0039%) of the total published opinions (8935) released during the study period.

With minor exceptions, the Nebraska Supreme Court cited the Review at least annually. During the last three years of the study, however, the Review was not cited once. The Review's best year was 1981 (five cases), followed closely by 1979 (four cases).

The average time between the year a Review article was published and the year the article was cited in an opinion was approximately eleven years. This number is deceptive. The average was significantly increased by seven citations to articles that were twenty-five years old or older at the time they were cited, including two citations that were about fifty-one years old at the time they were cited. Fifteen citations out of thirty-five (43%) were three years old or less at the time they were cited. Moreover, nine citations out of thirty-five (26%) were to articles that were two years old or less at the time of citation.

b. Tables

Arranged by year of opinion, we display the cases that cited the Review, including an abbreviated citation to the article, which can be found in Appendix A, Table 1. Arranged by volume number, the individual Review articles cited by the Nebraska Supreme Court, including author, title, and date, are displayed in Appendix A, Table 2.

2. Creighton Law Review

a. Highlights

The basic facts for the Creighton Law Review were similar to those for the Review. Indeed, at times the results were identical. During the same quarter century studied for the Review, the Nebraska

74. Individual cases sometimes cited more than one article. See infra app. A, tbl.1.
75. Due to rounding conventions, percentages stated throughout this Article are approximate and may not total one hundred percent. Moreover, when viewed in different contexts, the raw numbers may produce slightly different percentage totals. For example, when viewed together, four units out of thirty-five would be expressed as 11%. Likewise, two units out of thirty-five would be expressed as 6%. On the other hand, if one compares two units out of thirty-five with two other units out of thirty-five and then totals the percentages derived from the comparison, the percentage for four units becomes 12 rather than 11.
Supreme Court issued twenty-seven civil opinions and eight criminal opinions in which it cited twenty-eight different articles from the Creighton Law Review. Thus, the Nebraska Supreme Court cited the Creighton Law Review in thirty-five different cases—the same number of cases citing the Review. Even the mix of cases was nearly identical; that is, for the Review (74% civil/26% criminal) and for the Creighton Law Review (77% civil/23% criminal), the mix of civil and criminal cases did not vary by more than 3%.

A significant difference in citation practice regarding the Review and the Creighton Law Review was found in the number of separate articles cited. For the Review, thirty-seven different articles were cited. For the Creighton Law Review, twenty-eight different articles were cited. This, of course, means the Nebraska Supreme Court considered a greater variety of Review articles than articles from the Creighton Law Review.

The Creighton Law Review was cited only twice during the first seven years of the study, but because Creighton first began publishing a law review in 1968, this result was not surprising. After that, the Creighton Law Review, like the Review, consistently was cited at least once annually. The best year for the Creighton Law Review was 1992 (five cases), but 1979 (four cases) and 1986 (four cases) were not far behind. Like the Review, which was not cited in the last three years of the study, the Creighton Law Review was not cited during the last two years of the study.

Another significant difference between the Review and the Creighton Law Review is the average time span between date of publication and date of citation. The average time between the year a Creighton Law Review article was published and the year the article was cited is approximately four years, as compared to about eleven years for the Review. No doubt this difference is partly because the Creighton Law Review was first published in 1968, and as a result, the number of older Creighton Law Review articles available for citation is necessarily limited. The court cited only one article that was more than ten years old. Twenty-three citations out of thirty-five (66%) were to articles three years old or less. Moreover, thirteen citations out of thirty-five (37%) were to articles two years old or less.

---

76. Individual cases sometimes cited more than one article. See infra app. A, tbl.3.
77. Because this finding was unexpected, a similar, but abbreviated analysis was made of the citation practices of the United States Court of Appeals for the Eighth Circuit. The same search methodology was used, and the results were consistent. From 1972 through 1996, the Eighth Circuit cited each publication nine times. See infra app. F, tbl.17.
78. As will be noted later, the Nebraska Supreme Court tended to cite particular Creighton Law Review articles more than once. See infra subsection II.B.2.a & app. B, tbl.8. This generally was not the case for the Review. See infra subsection II.A.2.a & app. B, tbl.6.
b. Tables

Arranged by year of opinion, the cases that cited the Creighton Law Review, including an abbreviated citation to the article, are displayed in Appendix A, Table 3. Arranged by volume number, the individual Creighton Law Review articles cited by the Nebraska Supreme Court, including author, title, and date, are displayed in Appendix A, Table 4.

B. Authors

1. Nebraska Law Review
   a. Highlights

   The Nebraska Supreme Court cited Review authors without regard to their employment status at the time the article was written. In fact, the court evidenced no clear preference for one type of Review writer over another.

   One case cited both a student article and an article written by a professor. Accordingly, we treated this case as being attributable to both the student and the professor. This method results in a fraction (.5) being counted in each category. With this in mind, 12.5 out of thirty-five cases (36%) cited articles written by students, and 12.5 out of thirty-five cases (36%) cited the work of professors. Ten cases (29%) cited the work of practitioners or judges.

   Papers written by students were cited in 9.5 civil cases (27%) and three criminal cases (9%). Works by professors were cited in 10.5 civil cases (30%) and two criminal cases (6%). Works by practitioners or judges were cited in six civil cases (17%) and four criminal cases (11%).

   Only two of thirty-seven separate Review articles (5%) were cited more than once. A University of Nebraska law professor, Roger C. Henderson, and a Nebraska federal judge, Warren K. Urbom, authored those articles, each cited twice.

   b. Tables

   Indexed by the employment status of the article author at the time the article was written, and segregated by whether the case was a civil or criminal dispute, Appendix B, Table 5 displays the cases citing Review articles. Indexed by volume number and author name, Appendix B, Table 6 displays both the Review articles (including title and date) cited more than once and the cases that cited a Review article more than once.
2. Creighton Law Review

a. Highlights

Unlike its practice regarding the Review, the Nebraska Supreme Court cited law professors writing Creighton Law Review articles more frequently than students or professionals writing Creighton Law Review articles. While the court was willing to cite both students and professionals, the data clearly revealed a preference for two law professors, G. Michael Fenner and Ronald R. Volkmer, at the Creighton University School of Law. The data also revealed that the court infrequently cited the work of professionals writing Creighton Law Review articles.

Once again, one case cited two articles written by authors from different employment categories, and this resulted in the use of fractions. Eleven cases out of thirty-five (31%) cited student works. Twenty and one-half cases (59%) cited the work of professors. Three and one-half cases (10%) cited the work of practitioners or judges.

Articles written by students were cited in eight civil cases (23%) and three criminal cases (9%). Papers written by professors were cited in 15.5 civil cases (44%) and five criminal cases (14%). Works by practitioners or judges were cited in 3.5 civil cases (10%) and in no criminal cases.

Five Creighton Law Review articles out of twenty-eight separate articles (18%) cited by the Nebraska Supreme Court were referred to more than once. One student paper was cited twice,79 and four articles by two Creighton law professors, Fenner and Volkmer, were cited a total of eleven times. This means that two Creighton professors accounted for nearly one-third (31%) of the cases in which the Nebraska Supreme Court consulted the Creighton Law Review.

b. Tables

Indexed by the employment status of the article author at the time the article was written, and segregated by whether the case was a civil or criminal dispute, Appendix B, Table 7 displays the cases citing Creighton Law Review articles. Indexed by volume number and author name, Appendix B, Table 8 displays the Creighton Law Review articles (including title and date) cited more than once and the cases that cited a Creighton Law Review article more than once.

---

79. The student, John C. Minahan, Jr., later became a professor at the Vermont Law School and now serves as a United States bankruptcy judge for the District of Nebraska. ALMANAC OF THE FEDERAL JUDICeY, Eighth Circuit, District of Nebraska (1997), available in Westlaw (database AFJ). Judge Minahan also lectures at the University of Nebraska College of Law.
C. Subject Matter

1. Nebraska Law Review

   a. Highlights

   After examining the topics addressed by the thirty-seven different Review articles cited by the court, it seems the judges preferred articles dealing with trial procedure (6 or 16%) and evidence (6 or 16%). Nearly one-third (12 or 32%) of the thirty-seven articles dealt with either trial procedure or evidence issues.\(^{80}\)

   Nebraska water law clearly was the most frequent single topic of Review articles cited by the court; that is, seven articles out of thirty-seven (19%) dealt with water law. Other areas of interest included criminal and quasicriminal law (5 or 14%), torts (4 or 11%), tax law (3 or 8%), contracts (2 or 5%), family law (2 or 5%), real property law (1 or 3%), and probate (1 or 3%).

   b. Table

   Categorized by subject matter, author, title, and date, Appendix C, Table 9 displays the topics covered by Review articles cited by the Nebraska Supreme Court.

2. Creighton Law Review

   a. Highlights

   Like the judges' preference for certain types of Review articles, the Nebraska Supreme Court preferred Creighton Law Review articles dealing with trial procedure and evidence. Thus, out of twenty-eight separate articles cited by the court, twelve articles (43%) dealt with either trial procedure (6 or 21%) or evidence (6 or 21%).\(^{81}\)

   The court also preferred articles on real property, citing four different real property articles out of twenty-eight articles (14%) referred to

---

\(^{80}\) This analysis does not take into account articles that were cited more than once. For a description of the articles that were cited more than once, see infra app. B, tbl.6 (Review), and infra app. B, tbl.8 (Creighton Law Review). “Weighting” the subject matter areas of the articles to take into account multiple citations would not have materially changed the results discussed in the text regarding either publication. This is true for both the Review and the Creighton Law Review because the articles cited more than once tended to fall into the same subject matter concentrations discussed in the text. For example, the multiple citations to Judge Urbom’s jury treatment article in the Review only serve to emphasize the trial procedure concentration discussed in the text.

\(^{81}\) Two of Professor Fenner’s articles on evidence were cited five times. See infra app. B, tbl.8. This buttresses the conclusion expressed in the text that the Nebraska Supreme Court prefers trial procedure and evidence articles. Moreover, compared with all other authors, Professor Fenner’s articles were the most likely to significantly influence the court. See infra subsection II.E.2.a.
by the court. Other areas such as torts (3 or 11%), criminal law (3 or 11%), water law (1 or 4%), tax (1 or 4%), probate (1 or 4%), Uniform Commercial Code (1 or 4%), administrative law (1 or 4%), and a federal antidiscrimination statute (1 or 4%) aroused the interest of the Nebraska Supreme Court.

b. Table

Categorized by subject matter, author, title, and date, Appendix C, Table 10 displays the topics covered by Creighton Law Review articles cited by the Nebraska Supreme Court.

D. Judges and Opinions

1. Nebraska Law Review

a. Highlights

Among judges who were willing to cite the Review, those who graduated from the University of Nebraska College of Law cited the Review more frequently than judges who graduated from the Creighton University School of Law. Judges who graduated from the University of Nebraska College of Law accounted for fourteen of the thirty-five opinions (40%) citing the Review. Judges who graduated from the Creighton University School of Law accounted for ten of the opinions (29%) citing the Review.

Interestingly, Judge Donald Brodkey, who cited the Review most often (6 or 17%), graduated from the University of Iowa. Out of sixteen judges who wrote opinions citing the Review, four judges who served the Nebraska Supreme Court as chief justice (Paul W. White, Norman Krivosha, William C. Hastings, and C. Thomas White) accounted for a disproportionately large percentage of the opinions (13 or 37%) citing the Review.

Per curiam opinions infrequently (2 or 6%) cited the Review. Three lower court judges sitting with the Nebraska Supreme Court accounted for three of the opinions (9%) citing the Review.

Six judges, out of the nineteen who served as regular members of the Nebraska Supreme Court at some time during the 1972-1996 period, did not cite the Review. Of these six judges, four (David J. Lanphier, John F. Wright, William M. Connolly, and John M. Ger-

82. Professor Volkmer's articles on real property were cited six times. See infra app. B, tbl.8. This confirms the conclusion that real property was viewed by the court as a significant topic of interest.

83. For a history of the Nebraska Supreme Court, including a listing of the judges who served the court as chief justice or associate judge, see CLERK OF THE LEGISLATURE, NEBRASKA BLUE BOOK 1996-1997, at 789-96 (1997).

84. Those judges and their years of service are (1) John E. Newton (1967-1977); (2) John T. Grant (1983-1993); (3) David J. Lanphier (1993-1997); (4) John F. Wright
were appointed during the last three years of the study. Consequently, they had a limited opportunity to cite the Review.85 Thirteen regular members of the court cited the Review at least once.86

Out of thirty-five opinions citing the Review, and compared with concurring opinions (2 or 6%) and dissenting opinions (4 or 11%), majority opinions accounted for the largest number of opinions (29 or 83%) citing the Review. Of the twenty-nine majority opinions, the Review was cited in twenty-four civil cases (69%) and five criminal cases (14%). The Review was not cited in a concurring opinion dealing with a civil dispute, but it was cited twice in concurring opinions written in criminal cases (6%). The Review was cited twice in dissenting opinions in civil disputes (6%) and twice in dissenting opinions in criminal cases (6%).

b. Tables

On a case-by-case basis, Appendix D, Table 11 displays the citation history of individual judges who cited the Review at least once, together with each judge’s law school affiliation. Segregated by whether the case was a civil or criminal matter, and presented on a case-by-case basis, Appendix D, Table 12 details whether the opinions that cited the Review were majority, concurring, or dissenting opinions.

2. Creighton Law Review

a. Highlights

Among judges who were willing to cite the Creighton Law Review, those who graduated from the Creighton University School of Law were nearly twice as likely (15 to 8) to cite the Creighton Law Review compared with their judicial colleagues who graduated from the University of Nebraska College of Law. Judges who graduated from the Creighton University School of Law accounted for fifteen of the thirty-five opinions (43%) citing the Creighton Law Review. This result is similar to the results for the Review; that is, judges who graduated

85. CLERK OF THE LEGISLATURE, supra note 83, at 795. In addition, Kenneth Stephan and Michael McCormack were appointed to the Nebraska Supreme Court in 1997. Id. As a result, they were not counted since they did not serve during the time span covered by the study.

from the University of Nebraska College of Law wrote fourteen opinions (40%) that cited their school's review.

On the other hand, judges who graduated from the University of Nebraska College of Law accounted for only eight opinions (23%) that cited the Creighton Law Review. We may compare this finding with judges graduating from the Creighton University School of Law who accounted for ten opinions (29%) citing the Review.

Judge C. Thomas White, who graduated from the Creighton University School of Law, accounted for nearly one-third (10 or 29%) of the citations to the Creighton Law Review. It is noteworthy that this judge recently has written about the positive contributions of law reviews, particularly the Creighton Law Review, to judicial thought.87 This judge also was among the judges who most frequently cited the Review.88

Three of the four judges who served as chief justice of the Nebraska Supreme Court (Krivosha, Hastings, and C. Thomas White) during the period of this study accounted for a disproportionately large percentage of the opinions (15 or 43%) citing the Creighton Law Review. With two exceptions, this result is consistent with citations to the Review. First, Chief Justice Paul W. White, who cited the Review, did not cite the Creighton Law Review. Second, the chief justices cited the Creighton Law Review (15 or 43%) slightly more frequently than the Review (13 or 37%).

As with the Review, per curiam opinions infrequently (2 or 6%) cited the Creighton Law Review. Unlike the Review, district judges sitting with the Nebraska Supreme Court did not cite the Creighton Law Review.

Nine judges, out of the nineteen who served as regular members of the Nebraska Supreme Court during the study period, failed to cite the Creighton Law Review.89 As was the case for the Review, four of these judges (Lanphier, Wright, Connolly, and Gerrard) were appointed during the last three years of the study. Compared to thirteen regular members of the court who cited the Review at least once, ten

87. See C. Thomas White, Foreword, 30 CREIGHTON L. REV. 1 (1996). The Chief Justice observed that "[t]he frequent citation of the Creighton Law Review in our opinions reflects the value we feel this publication has for members of the judiciary and the practicing bar." Id. As this study suggests, the Chief Justice's use of the word "frequent" is an exaggeration, albeit a perfectly understandable one given the context.

88. See infra app. D, tbl.11.

regular members of the court cited the *Creighton Law Review* at least once.90

Out of the thirty-five opinions that cited the *Creighton Law Review*, and compared with concurring opinions (2 or 6%) and dissenting opinions (4 or 12%), majority opinions accounted for the largest number of opinions (29 or 83%) citing the *Creighton Law Review*. Twenty-three majority opinions in civil cases (66%) cited the *Creighton Law Review*, and six majority opinions in criminal cases (17%) cited the *Creighton Law Review*. The *Creighton Law Review* was cited in one civil concurring opinion (3%) and one criminal concurring opinion (3%). The *Creighton Law Review* was cited in three civil dissenting opinions (9%) and one criminal dissenting opinion (3%).

b. Tables

On a case-by-case basis, Appendix D, Table 13 displays the citation history of individual judges who cited the *Creighton Law Review* at least once, together with each judge's law school affiliation. Segregated by whether the case was a civil or criminal matter, and presented on a case-by-case basis, Appendix D, Table 14 details whether the opinions that cited the *Creighton Law Review* were majority, concurring, or dissenting opinions.

E. Influence

1. *Nebraska Law Review*

a. Highlights

Applying the "influence scale"91 to the thirty-five opinions that cited the *Review*, most citations to the *Review* had only minimal influence on the opinion writer. In other words, most citations to the *Review* involved nothing more than a reference to the publication.

---


91. As noted supra section I.B., the scale attempts to determine influence at three levels—"minimal influence," "moderate influence," and "significant influence." If the article was merely cited but not discussed (or quoted), the article was considered to have had only "minimal influence" on the writer. If the article was discussed (or quoted) by the writer rather than merely cited, it was considered to have had a "moderate influence" on the writer. If the article was discussed (or quoted), and the author of the opinion appeared to adopt or follow the reasoning of the article when resolving the issue for which the article was cited, the article was perceived to have had "significant influence" on the writer.
In five opinions (14%), all dealing with civil cases, the *Review* had a significant influence. The *Review* moderately influenced one opinion (3%) that dealt with a civil case as well. In twenty-nine opinions (83%), consisting of twenty civil and nine criminal cases, the *Review* had only minimal influence.

Of the six opinions significantly or moderately influenced by the *Review*, four were majority opinions and two were dissenting opinions. Six different judges (C. Thomas White, D. Nick Caporale, Thomas M. Shanahan, Paul W. White, Lawrence M. Clinton, and Harry A. Spencer) authored the opinions. Of the six judges who wrote opinions that were significantly or moderately influenced by the *Review*, all were regular members of the court rather than district judges sitting by designation. Three of the judges graduated from the University of Nebraska College of Law, two graduated from the Creighton University School of Law, and one judge graduated from the law school at Georgetown University.92 The four topics addressed by *Review* articles that significantly or moderately influenced the six Nebraska Supreme Court opinions were (1) water law (two cases); (2) tax law (two cases); (3) evidence; and (4) family law. The authors of the six articles that significantly or moderately influenced opinions included three professors, two professionals, and one student.

b. Table

Categorized by whether the case was a civil or criminal matter, Appendix E, Table 15 presents the cases in rank order of influence. For those opinions in which the *Review* had a significant or moderate influence, Table 15 also shows (1) whether the opinion was a majority or dissenting opinion; (2) the subject matter of the article; (3) the author, title, and date of the article; (4) the employment status of the author; and (5) the judge who wrote the opinion.

2. *Creighton Law Review*

a. Highlights

The *Creighton Law Review* fared better than the *Review* on the influence scale. Nonetheless, most citations to the *Creighton Law Review* were perfunctory.

The *Creighton Law Review* had a significant influence in ten opinions (29%) compared with five opinions (14%) for the *Review*. Nine of the opinions significantly influenced by the *Creighton Law Review* were civil in nature, and one was criminal in nature. No opinion was moderately influenced by the *Creighton Law Review* as compared to

92. For the law school affiliations of judges who cited the *Review*, see infra app. D, tbl.11.
one opinion (3%) for the Review. Twenty-five opinions (71%) citing the Creighton Law Review were only minimally influenced by the publication.

Of the ten opinions in which the Creighton Law Review significantly influenced the Nebraska Supreme Court, seven were majority opinions, one was a concurring opinion, and two were dissenting opinions. One opinion was per curiam.

Six different judges (Leslie Boslaugh, John T. Grant, Thomas M. Shanahan, William C. Hastings, Norman Krivosha, and C. Thomas White), all regular members of the court, wrote opinions that the Creighton Law Review significantly influenced. Three of the judges graduated from the University of Nebraska College of Law, two graduated from the Creighton University School of Law, and one judge graduated from the law school at Georgetown University. The Creighton Law Review twice significantly influenced three of the judges (Boslaugh, Shanahan, and Hastings). Of these three, two graduated from the University of Nebraska College of Law, and one graduated from Georgetown University.

The Creighton Law Review articles that significantly influenced the Nebraska Supreme Court addressed seven topics: (1) torts; (2) water law; (3) evidence (three cases); (4) trial procedure (two cases); (5) a federal antidiscrimination statute; (6) tax; and (7) real property.

Authors of the influential articles included four different professors, three students, and one professional. It is noteworthy that Professor Fenner (three cases) and Professor Volkmer (one case), both at the Creighton University School of Law, accounted for four of the ten cites. As noted earlier, these professors also dominated the multiple-citation analysis. Professor Fenner was more likely to significantly influence the court than any other author of either a Creighton Law Review or Review article.

b. Table

Categorized by whether the case was a civil or criminal matter, Appendix E, Table 16 presents the cases in rank order of influence. For those opinions in which the Creighton Law Review had a significant influence, Table 16 also depicts (1) whether the opinion was a majority or dissenting opinion; (2) the subject matter of the article; (3) the author, title, and date of the article; (4) the employment status of the author; and (5) the judge who wrote the opinion.

93. For the law school affiliations of these judges, see infra app. D, tbl.13.
94. See supra text accompanying notes 81-82. See also infra app. B, tbl.8.
95. Compare infra app. E, tbl.15, with infra app. E, tbl.16.
III. ANALYSIS

In this section we make judgments about the results of this study. We then make a recommendation regarding the creation of a “partnership” with the Nebraska bench.

A. Seven Judgments

Before making judgments, we reemphasize that a citation-counting study of judicial opinions is only one of many ways to evaluate the value of law reviews.96 A citation-counting study is at best a crude method of determining whether or not legal periodicals influence courts.97 More importantly, a single approach (like a citation-counting study) cannot prove or disprove the worth of a multipurpose institution such as a law review (or law school). If nothing else, law reviews are valuable because they afford law students and professors rigorous opportunities to think and write.98

Despite these limitations on the value of our work, judgments can and should be made. With regret that some are negative, we offer the following seven judgments based upon our efforts.

First, we have proven the hypothesis: over the last twenty-five years, the Review has had little apparent impact upon published opinions of the Nebraska Supreme Court whether measured quantitatively or qualitatively. The Review was cited in only a tiny fraction of the opinions (35/8935) written by the Nebraska Supreme Court. In other words, in twenty-five years the Nebraska Supreme Court cited the Review in less than 1% (.0039%) of its published opinions. Moreover, when the judges cited the Review, most of the time (83%) the publication had only a small influence on the court’s opinions.

Second, since the Review has had little apparent impact upon the opinions of the Nebraska Supreme Court, it is unlikely to have had a greater impact upon other precedent-making courts.99 Therefore, it is fair to conclude that the Review generally has had little impact upon judicial opinion writing over the last twenty-five years.

Third, overall the Creighton Law Review did no better than the Review. Remarkably, the Creighton Law Review scored virtually the same as the Review on the two most critical indices. In the study of the number of opinions citing each publication, the results were iden-
tical (35). Furthermore, when the judges cited the Creighton Law Review, most of the time (71%) it, like the Review, had only a small influence on the court’s opinions.

Fourth, judging from the citation practices of the Nebraska Supreme Court, both the Review and the Creighton Law Review possess specific strengths and weaknesses. Consequently, each publication could benefit from studying the manner in which the court cites the other. Some examples will illustrate this point.

The Nebraska Supreme Court considered a greater variety of articles published in the Review than in the Creighton Law Review. Overall, this suggests that the Review may have broader appeal to the Nebraska Supreme Court than the Creighton Law Review. As for topic areas, the Review clearly dominated the water law field when compared with the Creighton Law Review. In contrast, judges cited only two Review articles more than once. This factor suggests individual Review articles may be too narrowly focused, and the general appeal of the Review may be superficial.

Insofar as the Creighton Law Review is concerned, it published the most influential articles on evidence and real property. Moreover, two Creighton Law Review authors (Professors Fenner and Volkmer) were clear favorites of the Nebraska Supreme Court as compared to Review authors. From a negative point of view, the appeal of the Creighton Law Review is heavily dependent upon the work of these two law professors. As a result, one wonders whether the Creighton Law Review has put “too many eggs in two baskets.”

Fifth, putting the data for the Review and the Creighton Law Review together, we can derive a profile of the typical Nebraska Supreme Court opinion citing one of these two law reviews. A typical opinion citing a Review or Creighton Law Review article is (1) a civil case; (2) presenting a trial procedure, evidence, water law, or real property issue; (3) decided by a majority opinion written by a chief justice; (4) using a citation to an article that only minimally influences the opinion writer; (5) in which a law professor writes the article; (6) when the article is three years old or less.

Sixth, the type of article that has the best chance of greatly influencing the Nebraska Supreme Court is one like those written by Professor Roger C. Henderson, Professor Richard S. Harnsberger, Professor G. Michael Fenner, or Professor Ronald R. Volkmer.

102. See infra app. E, tbl.16 (listing G. Michael Fenner, Circumstantial Evidence in Nebraska, 19 Creighton L. Rev. 236 (1986)).
This type of article is notable for (1) a comprehensive treatment of doctrine and theory (as contrasted with doctrine or theory only)104 and (2) a Nebraska orientation.

Seventh, most Nebraska Supreme Court judges are willing to cite the Review or the Creighton Law Review. This is especially true for chief justices, particularly the present Chief Justice, C. Thomas White.

Judges who graduated from the University of Nebraska were willing to cite Creighton Law Review articles. Likewise, judges who graduated from the Creighton University School of Law were willing to cite Review articles. Nevertheless, quantitatively at least, the judges did have preferences. Judges who graduated from the University of Nebraska College of Law were more likely to cite Review articles than judges who graduated from the Creighton University School of Law. On the other hand, judges who graduated from the Creighton University School of Law were nearly twice as likely to cite Creighton Law Review articles as their University of Nebraska colleagues. Despite this, and contrary to any suggestion of favoritism, a judge's law school affiliation does not seem to play a part in whether an article significantly influences the judge.

B. An Editorial Partnership

If the editors of the Review wish to influence judicial opinions more significantly,105 we believe a conscious, concerted, and long-term effort to do so could result in greater judicial reliance on the Review. It is in this vein that we make the following recommendation regarding

103. See infra app. E, tbl.16 (listing Ronald R. Volkmer, Nebraska Law of Concurrent Ownership, 13 CREIGHTON L. REV. 513 (1979)).

104. This fits Judge Edwards' view of the proper role of legal scholarship. See Harry T. Edwards, The Growing Disjunction Between Legal Education and the Legal Profession, 91 Mich. L. Rev. 34, 34, 45 (1992)(a scholar turned federal court of appeals judge laments that many law schools "have abandoned their proper place, by emphasizing abstract theory at the expense of practical scholarship and pedagogy" and recommends that law schools and law reviews pursue a "practical scholarship" that includes "a good dose of theory," but that also gives "due weight to doctrine."). For our part, we agree that "practical scholarship and pedagogy" are desirable.

105. This is a critical "if." Before making such a decision, the editors would need to stake out a clear position in the ongoing debate on the role of legal education. See id. at 41. See also Roy T. Stuckey, Education for the Practice of Law: The Times They Are A-Changin', 75 NEB. L. REV. 648, 664-66 (1996)("The law school curriculum is broken. The challenge is how to fix it."). In addition, the editors would need to determine whether a specific attempt to appeal to the judiciary was warranted, given that other participants in, and consumers of, the law review process—students, lawyers, and academics—may well have different needs. See, e.g., Stier et al., supra note 98, at 1499-502 (discussing the different subject matter interests of lawyers, professors, and judges).
an editorial “partnership” between the Nebraska judiciary and the Review.

In so doing, we do not intend to offer a specific blueprint. On the contrary, we offer only a preliminary sketch, leaving to the “partners” the task of fully defining their relationship if they come to believe such an arrangement would be wise.

We start with the assumption that the more effort the Review makes to select topics and authors responsive to the felt needs of the judiciary, the more likely it is that the judiciary will rely upon the Review. We also assume that judges will use that which they have a hand in creating. We thus propose a formalized editorial relationship between the Review and Nebraska judges, the intended purpose being to foster the publication of articles that Nebraska judges will find useful.

For its part, the Review would agree in advance to devote significant resources—perhaps a quarter of its annual publication space—to topics selected in serious consultation with a judicial editorial board consisting of Nebraska judges.106 For their part, the members of the judicial editorial board would agree to invest a significant amount of their time107 to provide in-depth assistance in the selection of topics and authors for the Review. The judicial editorial board also should serve a “quality control” function by assessing whether or not the articles proposed for publication in the Review have value to Nebraska judges.

We do not propose that editorial control be given to the judicial editorial board. For the important purpose of preserving intellectual independence, ultimate editorial decisionmaking authority regarding article selection and editing should remain with the editorial staff of the Review.108 Instead, we suggest that the judicial editorial board

106. Such a “partnership” of course would require the participation of members of the Nebraska judiciary. Given the present Chief Justice’s endorsement of law reviews, see supra note 87, his support might be expected. Furthermore, one need only examine the volunteer work of Nebraska judges on behalf of Nebraska Continuing Legal Education, Inc. or the Nebraska Bar Foundation to conclude that there is a willingness among the bench to invest in “practical scholarship” of the type that Judge Edwards, supra note 104, and this Author endorse.

107. The investment of judicial time in this type of collaboration would be great. It should go without saying that if judges are unwilling to commit a significant amount of their time to this project, it will not be worth the effort. Bluntly put, we do not propose this association as “window dressing.”

108. A law review should serve as the “judge of judges.” Edwards, supra note 104, at 45 (quoting Stanley H. Fuld, A Judge Looks at the Law Review, 28 N.Y.U. L. Rev. 915, 917-18 (1953)). This function requires independence. Parenthetically, we do not advocate a return to faculty-edited law reviews either. See, e.g., Leo P. Martinez, Babies, Bathwater and Law Reviews, 47 Stan. L. Rev. 1139, 1144-45 (1995)(the academic dean at the University of California, Hastings College of
play an active, but not decisive, role in the selection of topics and authors.

After enough time has passed for the experiment to be fairly tested (perhaps five years), the "partnership" would be evaluated. For its part, the Review would want to know whether the relationship was fostering its goals. As for the judges, they would want to know whether the association was producing more meaningful scholarship from the perspective of the judiciary. We propose that this examination be broad ranging and include the views of academics, judges, lawyers, and members of the Review.

If the association is fruitful, the "partnership" could be made permanent with such alterations as might be necessary. Moreover, if the partnership proved successful, the idea might be extended to various Review consumers such as other judges, lawyers, or academics. If unsuccessful, the arrangement could be terminated. In either event, the Review would then publish an in-depth analysis of the partnership effort so that others might benefit from the experiment.

In short, editorial collaboration with Nebraska judges may serve to aid the Review. At a minimum, such collaboration could give the Review a more receptive judicial "market." In any event, such an effort involves little risk for either "partner."

IV. CONCLUSION

While it has many strengths, the Nebraska Law Review has had little apparent quantitative or qualitative influence on the opinions of the Nebraska Supreme Court during the last twenty-five years. The Review should strive to do better, and it can begin by forming an editorial partnership with the Nebraska judiciary.

Law, presents some of the arguments for retention of student-edited law reviews in comparison to faculty-edited publications).
### Table 1–Opinions (Total N=35)

<table>
<thead>
<tr>
<th>Year</th>
<th>Opinions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1972</td>
<td>2</td>
</tr>
<tr>
<td>1973</td>
<td>3</td>
</tr>
<tr>
<td>1974</td>
<td>0</td>
</tr>
<tr>
<td>1975</td>
<td>3</td>
</tr>
<tr>
<td>1976</td>
<td>1</td>
</tr>
<tr>
<td>1977</td>
<td>1</td>
</tr>
<tr>
<td>1978</td>
<td>2</td>
</tr>
<tr>
<td>1979</td>
<td>4</td>
</tr>
</tbody>
</table>

#### 1972 – 2
- George Rose Sodding & Grading Co. v. City of Omaha, 187 Neb. 683, 685, 193 N.W.2d 556, 557 (1972)(citing 43 Neb. L. Rev. 105 (1963)).

#### 1973 – 3

#### 1974 – 0

#### 1975 – 3
- Lockhard v. Lockhard, 193 Neb. 400, 402, 227 N.W.2d 581, 582 (1975)(citing 52 Neb. L. Rev. 1, 16 (1972)).

#### 1976 – 1
- State ex rel. Western Technical Community College Area v. Tallon, 196 Neb. 603, 613, 244 N.W.2d 183, 189 (1976)(Clinton, J., dissenting)(citing 34 Neb. L. Rev. 332, 342-43 (1954)).

#### 1977 – 1
- State v. Thompson, 198 Neb. 48, 56-57, 251 N.W.2d 387, 392 (1977)(citing 54 Neb. L. Rev. 93, 105 (1975)).

#### 1978 – 2

#### 1979 – 4
- Theobald v. Agee, 202 Neb. 524, 531, 276 N.W.2d 191, 195 (1979)(citing 27 Neb. L. Rev. 417 (1945); 32 Neb. L. Rev. 1, 2-9 (1952)).
1980 – 2
Little Blue Natural Resources Dist. v. Lower Platte N. Natural Resources Dist., 206 Neb. 535, 542, 294 N.W.2d 598, 602 (1980)(citing 29 Neb. L. Rev. 385 (1950); 44 Neb. L. Rev. 11 (1965); 51 Neb. L. Rev. 87 (1971)).

1981 – 5

1982 – 0

1983 – 1

1984 – 1

1985 – 0

1986 – 2

1987 – 1
Banner County v. State Bd. of Equalization & Assessment, 226 Neb. 236, 244, 411 N.W.2d 35, 41 (1987)(per curiam)(citing 64 Neb. L. Rev. 313 (1985)).

1988 – 1
In re Estate of Detlefs, 227 Neb. 531, 540, 418 N.W.2d 571, 577 (1988)(citing 32 Neb. L. Rev. 517, 520 (1953)).

1989 – 1

1990 – 2

1991 – 2

1992 – 0

1993 – 1
Christianson v. Education Serv. Unit No. 16, 243 Neb. 553, 559, 501 N.W.2d 281, 287 (1993)(citing 21 Neb. L. Rev. 76 (1942); 21 Neb. L. Rev. 94 (1942)).

1994 – 0
1995 – 0
1996 – 0
### Table 2–Articles (Total N=37)

<table>
<thead>
<tr>
<th>Volume</th>
<th>Article Title</th>
<th>Authors</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>30 NEB. L. REV.</td>
<td>Directed Verdicts Under Federal Civil Procedure Rule 50 and Under Sections 25-1315.01 to 25-1315.03 of the Nebraska Revised Statutes</td>
<td>Ray Simmons</td>
<td>30 NEB. L. REV. 630 (1951)</td>
</tr>
<tr>
<td>32 NEB. L. REV.</td>
<td>Selected Problems in Contract Liability</td>
<td>James A. Lake</td>
<td>32 NEB. L. REV. 1, 2-9 (1952)</td>
</tr>
<tr>
<td>32 NEB. L. REV.</td>
<td>The Nebraska Apportionment Act</td>
<td>Flavel A. Wright</td>
<td>32 NEB. L. REV. 517, 520 (1953)</td>
</tr>
<tr>
<td>37 NEB. L. REV.</td>
<td>The Rule Against Contribution and Its Status in Nebraska</td>
<td>Donald R. Wilson</td>
<td>37 NEB. L. REV. 820 (1958)</td>
</tr>
<tr>
<td>40 NEB. L. REV.</td>
<td>Some Approaches to the Instructional Problem</td>
<td>Paul W. White</td>
<td>40 NEB. L. REV. 413 (1961)</td>
</tr>
<tr>
<td>41 NEB. L. REV.</td>
<td>Diffused Surface Water Law in Nebraska</td>
<td>Clayton Yeutter</td>
<td>41 NEB. L. REV. 765 (1962)</td>
</tr>
<tr>
<td>43 NEB. L. REV.</td>
<td>Offers of Proof in Nebraska</td>
<td>Calvin E. Robinson</td>
<td>43 NEB. L. REV. 105 (1963)</td>
</tr>
<tr>
<td>44 NEB. L. REV.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Clayton K. Yeutter, A Legal-Economic Critique of Nebraska Watercourse Law, 44 Neb. L. Rev. 11 (1965).

49 Neb. L. Rev.

50 Neb. L. Rev.

51 Neb. L. Rev.

52 Neb. L. Rev.

53 Neb. L. Rev.

54 Neb. L. Rev.
Alan G. Gless, Comment, Nebraska's Corroboration Rule, 54 Neb. L. Rev. 93, 105 (1975).

56 Neb. L. Rev.

57 Neb. L. Rev.

58 Neb. L. Rev.
59 NEB. L. REV.  

60 NEB. L. REV.  

61 NEB. L. REV.  

62 NEB. L. REV.  

64 NEB. L. REV.  
Todd D. Lebsack, Note, *Separate Property Tax Classification for Agricultural Land: Cure or Disease?*, 64 NEB. L. REV. 313 (1985).

65 NEB. L. REV.  
BASIC FACTS—CREIGHTON LAW REVIEW

Table 3—Opinions (Total N=35)

1972 – 1

1973 – 0
1974 – 0
1975 – 1

1976 – 0
1977 – 0
1978 – 0
1979 – 4
Davis Management, Inc. v. Sanitary & Improvement Dist. No. 276, 204 Neb. 316, 320, 282 N.W.2d 576, 579 (1979)(citing 5 CREIGHTON L. REV. 269 (1972)).
In re Estate of Snigler, 205 Neb. 24, 26, 285 N.W.2d 836, 837 (1979)(citing 9 CREIGHTON L. REV. 476, 478 (1976)).

1980 – 3

1981 – 2
Cline v. Franklin Pork, Inc., 210 Neb. 238, 244, 313 N.W.2d 667, 671 (1981)(citing 9 CREIGHTON L. REV. 559 (1976)).

1982 – 2

1983 – 1

1984 – 1

1985 – 3

1986 – 4

1987 – 3

1988 – 1

1989 – 1

1990 – 0
1991 – 0
1992 – 5

1993 – 2

1994 – 1

1995 – 0
1996 – 0
Table 4—Articles (Total N=28)

5 CREIGHTON L. REV.
John C. Minahan, Jr., Comment, Nebraska Sanitary and Improvement District Legislation, 5 CREIGHTON L. REV. 269 (1972).

7 CREIGHTON L. REV.
D.R. Busick, Contribution and Indemnity Between Tortfeasors in Nebraska, 7 CREIGHTON L. REV. 182 (1974).

8 CREIGHTON L. REV.

9 CREIGHTON L. REV.

10 CREIGHTON L. REV.

11 CREIGHTON L. REV.

13 CREIGHTON L. REV.

16 CREIGHTON L. REV.
17 CREIGHTON L. REV.

18 CREIGHTON L. REV.

19 CREIGHTON L. REV.

20 CREIGHTON L. REV.

22 CREIGHTON L. REV.

25 CREIGHTON L. REV.
APPENDIX B

AUTHORS—NEBRASKA LAW REVIEW

Table 5—Employment Status of Author  
(Total N=35)

<table>
<thead>
<tr>
<th>Employment Status</th>
<th>Cases</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>STUDENT (12.5 CASES)</td>
<td>(36%)</td>
<td></td>
</tr>
<tr>
<td>Civil</td>
<td>9.5</td>
<td>(27%)</td>
</tr>
<tr>
<td>Criminal</td>
<td>3</td>
<td>(9%)</td>
</tr>
<tr>
<td>PROFESSOR (12.5 CASES)</td>
<td>(36%)</td>
<td></td>
</tr>
<tr>
<td>Civil</td>
<td>10.5</td>
<td>(30%)</td>
</tr>
</tbody>
</table>

Banner County v. State Bd. of Equalization & Assessment, 226 Neb. 236, 244, 411 N.W.2d 35, 41 (1987)(per curiam)(citing 64 Neb. L. Rev. 313 (1985)).


George Rose Sodding & Grading Co. v. City of Omaha, 187 Neb. 683, 685, 193 N.W.2d 556, 557 (1972)(citing 43 Neb. L. Rev. 105 (1963)).


State v. Thompson, 198 Neb. 48, 56-57, 251 N.W.2d 387, 392 (1977)(citing 54 Neb. L. Rev. 93, 105 (1975)).


Christianson v. Education Serv. Unit No. 16, 243 Neb. 553, 559, 501 N.W.2d 281, 287 (1993)(citing 21 Neb. L. Rev. 76 (1942); 21 Neb. L. Rev. 94 (1942)).

Little Blue Natural Resources Dist. v. Lower Platte N. Natural Resources Dist., 206 Neb. 535, 542, 294 N.W.2d 598, 602 (1980)(citing 29 Neb. L. Rev. 385 (1950); 44 Neb. L. Rev. 11 (1965); 51 Neb. L. Rev. 87 (1971)).

Lockard v. Lockard, 193 Neb. 400, 402, 227 N.W.2d 581, 582 (1975)(citing 52 Neb. L. Rev. 1, 16 (1972)).


Criminal (2) (6%)

PRACTITIONER OR JUDGE (10 CASES) (29%)

Civil (6) (17%)
State ex rel. Western Technical Community College Area v. Tallon, 196 Neb. 603, 613, 244 N.W.2d 183, 189 (1976)(Clinton, J., dissenting)(citing 34 Neb. L. Rev. 332, 342-43 (1954)).
In re Estate of Detlef, 227 Neb. 531, 540, 418 N.W.2d 571, 577 (1988)(citing 32 Neb. L. Rev. 517, 520 (1953)).

Criminal (4) (11%)
Table 6—Articles Cited More Than Once

52 Neb. L. Rev. 1 (1972)
Lockard v. Lockard, 193 Neb. 400, 402, 227 N.W.2d 581, 582 (1975)(citing 52 Neb. L. Rev. 1, 16 (1972)).

61 Neb. L. Rev. 409 (1982)
Table 7--Employment Status of Author (Total N=35)

<table>
<thead>
<tr>
<th>Employment Status</th>
<th>Total Cases</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Student</td>
<td>11</td>
<td>31%</td>
</tr>
<tr>
<td>Civil</td>
<td>8</td>
<td>23%</td>
</tr>
<tr>
<td>Davis Management, Inc. v. Sanitary &amp; Improvement Dist. No. 276, 204 Neb. 316, 320, 282 N.W.2d 576, 579 (1979)(citing 5 CREIGHTON L. REV. 269 (1972)).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Criminal</td>
<td>3</td>
<td>9%</td>
</tr>
<tr>
<td>Professors</td>
<td>20.5</td>
<td>59%</td>
</tr>
<tr>
<td>Civil</td>
<td>15.5</td>
<td>44%</td>
</tr>
<tr>
<td>Cline v. Franklin Pork, Inc., 210 Neb. 238, 244, 313 N.W.2d 667, 671 (1981)(citing 9 CREIGHTON L. REV. 559 (1976)).</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


In re Estate of Snigler, 205 Neb. 24, 26, 285 N.W.2d 836, 837 (1979)(citing 9 CREIGHTON L. REV. 476, 478 (1976)).


Criminal (5) (14%)


PRACTITIONERS OR JUDGES (3.5 CASES) (10%)

Civil (3.5) (10%)


No Criminal
Table 8–Articles Cited More Than Once

<table>
<thead>
<tr>
<th>Year/Volume</th>
<th>Citation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Davis Management, Inc. v. Sanitary &amp; Improvement Dist. No. 276, 204 Neb. 316, 320, 282 N.W.2d 576, 579 (1979)(citing 5 CREIGHTON L. REV. 269 (1972)).</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Cline v. Franklin Pork, Inc., 210 Neb. 238, 244, 313 N.W.2d 667, 671 (1981)(citing 9 CREIGHTON L. REV. 559 (1976)).</td>
<td></td>
</tr>
</tbody>
</table>
APPENDIX C

SUBJECT MATTER—NEBRASKA LAW REVIEW

Table 9—Articles by Subject Matter (Total N=37)

TRIAL PROCEDURE (6) (16%)

EVIDENCE (6) (16%)

WATER (7) (19%)

**CRIMINAL/QUASICRIMINAL (5) (14%)**

**TORTS (4) (11%)**

**TAX (3) (8%)**
- Todd D. Lebsack, Note, *Separate Property Tax Classification for Agricultural Land: Cure or Disease?*, 64 Neb. L. Rev. 313 (1985).

**CONTRACTS (2) (5%)**

**FAMILY (2) (5%)**

**REAL PROPERTY (1) (3%)**

PROBATE (1) (3%)
SUBJECT MATTER—CREIGHTON LAW REVIEW
Table 10—Articles by Subject Matter (Total N=28)

TRIAL PROCEDURE (6) (21%)

EVIDENCE (6) (21%)

REAL PROPERTY (4) (14%)

TORTS (3) (11%)

D.R. Busick, Contribution and Indemnity Between Tortfeasors in Nebraska, 7 Creighton L. Rev. 182 (1974).


CRIMINAL/QUASICRIMINAL (3) (11%)


WATER (1) (4%)


TAX (1) (4%)


PROBATE (1) (4%)


UNIFORM COMMERCIAL CODE (1) (4%)


ADMINISTRATIVE (1) (4%)

John C. Minahan, Jr., Comment, Nebraska Sanitary and Improvement District Legislation, 5 Creighton L. Rev. 269 (1972).

FEDERAL ANTIDISCRIMINATION STATUTE (1) (4%)

### Table 11-Judges and Law Schools (Total N=35)

<table>
<thead>
<tr>
<th>Judges</th>
<th>Law Schools</th>
<th>Citations</th>
</tr>
</thead>
<tbody>
<tr>
<td>BRODKEY, DONALD</td>
<td>UNIVERSITY OF IOWA COLLEGE OF LAW</td>
<td>锁码和Lockard案，193 Neb. 400, 402, 227 N.W.2d 581, 582 (1975)(citing 52 NEB. L. REV. 1, 16 (1972)).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Theobald和Agee, 202 Neb. 524, 531, 276 N.W.2d 191, 195 (1979)(citing 27 NEB. L. REV. 417 (1948); 32 NEB. L. REV. 1, 2-9 (1952)).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>State v. Thompson, 198 Neb. 48, 56-57, 251 N.W.2d 387, 392 (1977)(citing 54 NEB. L. REV. 93, 105 (1975)).</td>
</tr>
<tr>
<td>CASE, RAYMOND J.</td>
<td>CREIGHTON UNIVERSITY SCHOOL OF LAW</td>
<td>克劳斯和Crosley, 202 Neb. 806, 811, 277 N.W.2d 242, 246 (1979)(citing 34 NEB. L. REV. 280 (1954)).</td>
</tr>
</tbody>
</table>

---

110. Id. at 243.
111. The AMERICAN BENCH 1446 (Marie T. Finn et al. eds., 7th ed. 1993-94).
112. MARTINDALE-HUBBELL LAW DIRECTORY, CD-ROM (July 7, 1997). Judge Case, a district judge, sat by designation.
113. The AMERICAN BENCH, supra note 111, at 1447. Judge Coady, a district judge, sat by designation.
CLINTON, LAWRENCE M. → CREIGHTON UNIVERSITY SCHOOL OF LAW

(1) (3%)
State ex rel. Western Technical Community College Area v. Tallon, 196 Neb. 603, 613, 244 N.W.2d 183, 189 (1976)(Clinton, J., dissenting)(citing 34 Neb. L. Rev. 332, 342-43 (1954)).

FAHRNBRUCH, DALE E. → CREIGHTON UNIVERSITY SCHOOL OF LAW

(1) (3%)
Christianson v. Education Serv. Unit No. 16, 243 Neb. 553, 559, 501 N.W.2d 281, 287 (1993)(citing 21 Neb. L. Rev. 76 (1942); 21 Neb. L. Rev. 94 (1942)).

HASTINGS, WILLIAM C. → UNIVERSITY OF NEBRASKA COLLEGE OF LAW

(1) (3%)

HIPPE, ROBERT O. → UNIVERSITY OF NEBRASKA COLLEGE OF LAW

(1) (3%)

KRIVOSHA, NORMAN → UNIVERSITY OF NEBRASKA COLLEGE OF LAW

(5) (14%)
Little Blue Natural Resources Dist. v. Lower Platte N. Resources Dist., 206 Neb. 535, 542, 294 N.W.2d 598, 602 (1980)(citing 29 Neb. L. Rev. 385 (1950); 44 Neb. L. Rev. 11 (1965); 51 Neb. L. Rev. 87 (1971)).

MCCOWN, HALE → DUKE UNIVERSITY SCHOOL OF LAW

(1) (3%)

SHANAHAN, THOMAS M. → GEORGETOWN UNIVERSITY LAW CENTER

(1) (3%)

114. MARTINDALE-HUBBELL LAW DIRECTORY, supra note 112.
115. THE AMERICAN BENCH, supra note 111, at 1447.
116. Id. at 1449.
117. Id. at 1450. Judge Hippe, a district judge, sat by designation.
118. MARTINDALE-HUBBELL LAW DIRECTORY, supra note 112.
119. Id.
120. Id.
SMITH, ROBERT L. → CREIGHTON UNIVERSITY SCHOOL OF LAW

Antrim v. Pittman, 189 Neb. 474, 475, 203 N.W.2d 510, 511 (1973) (citing 38 Neb. L. Rev. 835, 848 (1959)).


SPENCER, HARRY A. → UNIVERSITY OF NEBRASKA COLLEGE OF LAW


WHITE, PAUL W. → UNIVERSITY OF NEBRASKA COLLEGE OF LAW

George Rose Sodding & Grading Co. v. City of Omaha, 187 Neb. 683, 685, 193 N.W.2d 556, 557 (1972) (citing 43 Neb. L. Rev. 105 (1963)).

Magruder v. Magruder, 190 Neb. 573, 584, 209 N.W.2d 585, 591 (1973) (White, C.J., dissenting) (citing 52 Neb. L. Rev. 1, 23 (1972)).

WHITE, C. THOMAS → CREIGHTON UNIVERSITY SCHOOL OF LAW


PER CURIAM

Banner County v. State Bd. of Equalization & Assessment, 226 Neb. 236, 244, 411 N.W.2d 35, 41 (1987) (per curiam) (citing 64 Neb. L. Rev. 313 (1985)).

Van Ostrand v. Beccard, 188 Neb. 326, 329, 196 N.W.2d 385, 386 (1972) (per curiam) (citing 49 Neb. L. Rev. 7 (1969)).

122. Id.
123. Martindale-Hubbell Law Directory, supra note 112.
124. The American Bench, supra note 111, at 1456.
Table 12—Types of Opinions (Total N=35)

MAJORITY (29 CASES) (83%)

Civil (24) (69%)

- Banner County v. State Bd. of Equalization & Assessment, 226 Neb. 236, 244, 411 N.W.2d 35, 41 (1987) (per curiam) (citing 64 Neb. L. Rev. 313 (1985)).
- Christianson v. Education Serv. Unit No. 16, 243 Neb. 553, 559, 501 N.W.2d 281, 287 (1993) (citing 21 Neb. L. Rev. 76 (1942); 21 Neb. L. Rev. 94 (1942)).
- George Rose Sodding & Grading Co. v. City of Omaha, 187 Neb. 683, 685, 193 N.W.2d 556, 557 (1972) (citing 43 Neb. L. Rev. 105 (1963)).
- Little Blue Natural Resources Dist. v. Lower Platte N. Natural Resources Dist., 206 Neb. 535, 542, 294 N.W.2d 598, 602 (1980) (citing 29 Neb. L. Rev. 385 (1950); 44 Neb. L. Rev. 11 (1965); 51 Neb. L. Rev. 87 (1971)).
- Lockard v. Lockard, 193 Neb. 400, 402, 227 N.W.2d 581, 582 (1975) (citing 52 Neb. L. Rev. 1, 16 (1972)).
- Van Ostrand v. Beccard, 188 Neb. 326, 329, 196 N.W.2d 385, 386 (1972) (per curiam) (citing 49 Neb. L. Rev. 7 (1969)).

In re Estate of Detlefs, 227 Neb. 531, 540, 418 N.W.2d 571, 577 (1988)(citing 32 NEB. L. Rev. 517, 520 (1953)).


Criminal (5) (14%)

State v. Thompson, 198 Neb. 48, 56-57, 251 N.W.2d 387, 392 (1977)(citing 54 NEB. L. Rev. 93, 105 (1975)).


CONCURRENCE (2 CASES) (6%)

Civil (None)

Criminal (2) (6%)


DISSENT (4 CASES) (11%)

Civil (2) (6%)

Magruder v. Magruder, 190 Neb. 573, 584, 209 N.W.2d 585, 591 (1973)(White, C.J., dissenting)(citing 52 NEB. L. Rev. 1, 23 (1972)).

State ex rel. Western Technical Community College Area v. Tallon, 196 Neb. 603, 613, 244 N.W.2d 183, 189 (1976)(Clinton, J., dissenting)(citing 34 NEB. L. Rev. 382, 342-43 (1954)).

Criminal (2) (6%)


Table 13—Judges and Law Schools (Total N=35)

**BRODKEY, DONALD → UNIVERSITY OF IOWA COLLEGE OF LAW**
(3) (9%)

**BOSLAUGH, LESLIE → UNIVERSITY OF NEBRASKA COLLEGE OF LAW**
(3) (9%)

**FAHRNBRUCH, DALE E. → CREIGHTON UNIVERSITY SCHOOL OF LAW**
(1) (3%)

**GRANT, JOHN T. → CREIGHTON UNIVERSITY SCHOOL OF LAW**
(3) (9%)

**HASTINGS, WILLIAM C. → UNIVERSITY OF NEBRASKA COLLEGE OF LAW**
(2) (6%)

125. See supra note 109.
126. See supra note 110.
127. See supra note 115.
128. MARTINDALE-HUBBELL LAW DIRECTORY, supra note 112.
129. See supra note 116.
KRIVOSHA, NORMAN → UNIVERSITY OF NEBRASKA COLLEGE OF LAW

(3) (9%)

Davis Management, Inc. v. Sanitary & Improvement Dist. No. 276, 204 Neb. 316, 320, 282 N.W.2d 576, 579 (1979) (citing 5 CREIGHTON L. REV. 269 (1972)).


In re Estate of Price, 223 Neb. 12, 23, 388 N.W.2d 72, 80 (1986) (Krivosha, C.J., concurring) (citing 19 CREIGHTON L. REV. 236, 245 (1986)).

MCCOWN, HALE → DUKE UNIVERSITY SCHOOL OF LAW

(2) (6%)


SHANAHAN, THOMAS M. → GEORGETOWN UNIVERSITY LAW CENTER

(5) (14%)


SMITH, ROBERT L. → CREIGHTON UNIVERSITY SCHOOL OF LAW

(1) (3%)


WHITE, C. THOMAS → CREIGHTON UNIVERSITY SCHOOL OF LAW

(10) (29%)


130. See supra note 118.
131. See supra note 119.
132. See supra note 120.
133. See supra note 121.
134. See supra note 124.
Cline v. Franklin Pork, Inc., 210 Neb. 238, 244, 313 N.W.2d 667, 671 (1981)(citing 9 CREIGHTON L. REV. 559 (1976)).

_In re_ Estate of Snigler, 205 Neb. 24, 26, 285 N.W.2d 836, 837 (1979)(citing 9 CREIGHTON L. REV. 476, 478 (1976)).

_In re_ Estate of Steppuhn, 221 Neb. 329, 333, 377 N.W.2d 83, 86 (1985)(citing 13 CREIGHTON L. REV. 513 (1979)).


PER CURIAM
(2) (6%)


Table 14—Types of Opinions (Total N=35)

MAJORITY (29 CASES) (83%)

Civil (23) (66%)


Cline v. Franklin Pork, Inc., 210 Neb. 238, 244, 313 N.W.2d 667, 671 (1981)(citing 9 CREIGHTON L. REV. 559 (1976)).

Davis Management, Inc. v. Sanitary & Improvement Dist. No. 276, 204 Neb. 316, 320, 282 N.W.2d 576, 579 (1979)(citing 5 CREIGHTON L. REV. 269 (1972)).


In re Estate of Snigler, 205 Neb. 24, 26, 285 N.W.2d 836, 837 (1979)(citing 9 CREIGHTON L. REV. 476, 478 (1976)).


Criminal (6) (17%)

CONCURRENCE (2 CASES) (6%)
Civil (1) (3%)

Criminal (1) (3%)

DISSENT (4 CASES) (11%)
Civil (3) (9%)

Criminal (1) (3%)
APPENDIX E
INFLUENCE—NEBRASKA LAW REVIEW

Table 15—Influence Scale (Total N=35)

SIGNIFICANT INFLUENCE (5 CASES) (14%)
Civil (5) (14%)
Majority (3) (9%)

In re Estate of Detlefs, 227 Neb. 531, 540, 418 N.W.2d 571, 577 (1988)(citing 32 Neb. L. Rev. 517, 520 (1953)).
Subject Matter: Tax
Author Status: Professional
Judge: C. Thomas White

Subject Matter: Water
Author Status: Student
Judge: D. Nick Caporale

Subject Matter: Evidence
Author Status: Professor
Judge: Thomas M. Shanahan

Dissenting (2) (6%)

Subject Matter: Family Law
Author Status: Professor
Judge: Paul W. White

State ex rel. Western Technical Community College Area v. Tallon, 196 Neb. 603, 613, 244 N.W.2d 183, 189 (1976)(Clinton, J., dissenting)(citing 34 Neb. L. Rev. 332, 342-43 (1954)).
Subject Matter: Tax
Author Status: Professional
Judge: Lawrence M. Clinton

Criminal (0)
MODERATE INFLUENCE (1 CASE) (3%)
Civil (1) (3%)
  Majority (1) (3%)

Subject Matter: Water

Author Status: Professor
Judge: Harry A. Spencer

MINIMAL INFLUENCE (29 CASES) (83%)
Civil (20) (57%)
  Banner County v. State Bd. of Equalization & Assessment, 226 Neb. 236, 244, 411 N.W.2d 35, 41 (1987)(per curiam)(citing 64 NEB. L. Rev. 313 (1985)).
  Christianson v. Education Serv. Unit No. 16, 243 Neb. 553, 559, 501 N.W.2d 281, 287 (1983)(citing 21 NEB. L. Rev. 76 (1942); 21 NEB. L. Rev. 94 (1942)).
  George Rose Sodding & Grading Co. v. City of Omaha, 187 Neb. 683, 685, 193 N.W.2d 556, 557 (1972)(citing 43 NEB. L. Rev. 105 (1963)).
  Krause v. Crossley, 202 Neb. 806, 811, 277 N.W.2d 242, 246 (1979)(citing 34 NEB. L. Rev. 280 (1954)).
  Little Blue Natural Resources Dist. v. Lower Platte N. Natural Resources Dist., 206 Neb. 535, 542, 294 N.W.2d 598, 602 (1980)(citing 29 NEB. L. Rev. 385 (1950); 44 NEB. L. Rev. 11 (1965); 51 NEB. L. Rev. 87 (1971)).
  Lockard v. Lockard, 193 Neb. 400, 402, 227 N.W.2d 581, 582 (1975)(citing 52 NEB. L. Rev. 1, 16 (1972)).
  Lockhart v. Continental Cheese, Inc., 203 Neb. 331, 335, 278 N.W.2d 604, 606 (1979)(citing 30 NEB. L. Rev. 630 (1951)).
Theobald v. Agee, 202 Neb. 524, 531, 276 N.W.2d 191, 195 (1979)(citing 27 NEB. L. REV. 417 (1948); 32 NEB. L. REV. 1, 2-9 (1952)).

Criminal (9) (26%)
State v. Thompson, 198 Neb. 48, 56-57, 251 N.W.2d 387, 392 (1977)(citing 54 NEB. L. REV. 93, 105 (1975)).
Table 16–Influence Scale (Total N=35)

SIGNIFICANT INFLUENCE (10 CASES) (29%)

Civil (9) (26%)

Majority (6) (17%)


Subject Matter: Real Property


Author Status: Professor

Judge: C. Thomas White


Subject Matter: Federal Antidiscrimination Statute


Author Status: Student

Judge: William C. Hastings


Subject Matter: Tax


Author Status: Student

Judge: Per Curiam


Subject Matter: Trial Procedure


Author Status: Professional

Judge: Leslie Boslaugh


Subject Matter: Water


Author Status: Professor

Judge: John T. Grant


Subject Matter: Trial Procedure
Author Status: Professor
Judge: William C. Hastings

Concurrence (1) (3%)
Subject Matter: Evidence
Author Status: Professor
Judge: Norman Krivosha

Dissenting (2) (6%)
Subject Matter: Torts
Author Status: Student
Judge: Leslie Boslaugh

Subject Matter: Evidence
Author Status: Professor
Judge: Thomas M. Shanahan

Criminal (1) (3%)
Majority (1) (3%)
Subject Matter: Evidence
Author Status: Professor
Judge: Thomas M. Shanahan

MODERATE INFLUENCE (0)
MINIMAL INFLUENCE (25 CASES) (71%)
Civil (18) (51%)
Cline v. Franklin Pork, Inc., 210 Neb. 238, 244, 313 N.W.2d 667, 671 (1981)(citing 9 CREIGHTON L. REV. 559 (1976)).
Davis Management, Inc. v. Sanitary & Improvement Dist. No. 276, 204 Neb. 316, 320, 282 N.W.2d 576, 579 (1979)(citing 5 CREIGHTON L. REV. 269 (1972)).
In re Estate of Snigler, 205 Neb. 24, 26, 285 N.W.2d 836, 837 (1979)(citing 9 CREIGHTON L. REV. 476, 478 (1976)).

Criminal (7) (20%)
State v. Price, 202 Neb. 308, 323, 275 N.W.2d 82, 91 (1979) (citing 9 CREIGHTON L. REV. 559, 599 (1976)).
State v. Ohler, 208 Neb. 742, 751, 305 N.W.2d 637, 642 (1981) (Brodkey, J., concurring) (citing 13 CREIGHTON L. REV. 653 (1979)).
APPENDIX F

Table 17—Eighth Circuit/Nebraska Law Review and Creighton Law Review

NEBRASKA LAW REVIEW (Total N=9)
2. Crenshaw v. Wolff, 504 F.2d 377, 379 n.2 (8th Cir. 1974)(citing 52 NEB. L. REV. 69 (1972)).
   Wayne Kreuscher, Comment, Competency to Stand Trial in Nebraska, 52 NEB. L. REV. 69 (1972).
3. Hurt v. General Motors Corp., 553 F.2d 1181, 1184 (8th Cir. 1977)(citing 56 NEB. L. REV. 422, 429 (1977)).
5. Mattis v. Schnarr, 547 F.2d 1007, 1012 n.7 (8th Cir. 1976)(citing 33 NEB. L. REV. 408 (1954)).
8. Brinkley v. United States, 498 F.2d 505, 510 (8th Cir. 1974)(citing 44 NEB. L. REV. 703 (1965)).
9. United States v. Grant, 489 F.2d 27, 30 n.6 (8th Cir. 1973)(citing 37 NEB. L. REV. 802 (1958)).

CREIGHTON LAW REVIEW (Total N=9)
1. Austin v. Loftsgaarden, 675 F.2d 168, 174 n.6 (8th Cir. 1982)(citing 12 CREIGHTON L. REV. 781, 783 (1979)).
2. Austin v. Loftsgaarden, 768 F.2d 949, 958 (8th Cir. 1985)(per curiam)(citing 16 CREIGHTON L. REV. 1140, 1151 (1983)). 
   Julie A. Eichorn, Note, Austin v. Loftsgaarden: Securities Fraud in Real Estate Limited Partnership Investments—Offsetting Plaintiffs’ Relief to the Extent of Tax Benefits Received, 16 CREIGHTON L. REV. 1140, 1151 (1983).
5. Miller v. Central Chinchilla Group, Inc., 494 F.2d 414, 417 n.8 (8th Cir. 1974)(citing 6 CREIGHTON L. REV. 450 (1973)). 
6. In re PFA Farmers Mkt. Ass’n, 583 F.2d 992, 1002 (8th Cir. 1978)(citing 10 CREIGHTON L. REV. 733 (1977)). 