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## WIKIPEDIA IN COURT: WHEN AND HOW CITING WIKIPEDIA AND OTHER CONSENSUS WEBSITES IS APPROPRIATE

JASON C. MILLER<sup>†</sup> & HANNAH B. MURRAY<sup>††</sup>

### I. INTRODUCTION

In *Bourgeois v. Peters*, resolution of the controversy required a classic balancing of liberty and security.<sup>1</sup> In rejecting a claim that the Department of Homeland Security's elevated threat level justified more intrusive police procedures, the Eleventh Circuit became one of the first courts to rely on the expertise of Wikipedia.<sup>2</sup> Wikipedia reported that the country had been at "yellow alert" for almost three years, an amount of time, the court reasoned, that weakened the government's claim that the War on Terror necessitated extreme measures.<sup>3</sup> Since then, courts throughout the country have looked to Wikipedia for geographic information,<sup>4</sup> to establish which days are "business days,"<sup>5</sup> to explain the meaning of common phrases,<sup>6</sup> to define

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<sup>1</sup> 387 F.3d 1303, 1312 (11th Cir. 2004).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *E.g.* Reuland v. Hynes, 460 F.3d 409, 423 n.1 (2d Cir. 2006) (Winter, J., dissenting).

<sup>5</sup> *Aubin v. Residential Funding Co.*, 565 F. Supp. 2d 392, 397 (D. Conn. 2008).

<sup>6</sup> *E.g.* *United States v. Yazzen*, 187 Fed. App'x 800, 802 n.1 (10th Cir. 2006) (such as the "elephant in the room").

such technical terms as “radiculopathy,”<sup>7</sup> to interpret slang such as “booty music,”<sup>8</sup> and for a range of other purposes.

Wikipedia is a free encyclopedia that anyone can edit.<sup>9</sup> Google searches present Wikipedia articles at or near the top of listed search results.<sup>10</sup> Wikipedia’s accessibility and vast content make Wikipedia an easy source for information. But because anyone can edit the site, many legal scholars, including Cass R. Sunstein<sup>11</sup> and Brian Leither,<sup>12</sup> oppose citing Wikipedia.<sup>13</sup> Though one court put Wikipedia in the category of “questionable sources,” others continue to rely on Wikipedia in opinions.<sup>14</sup>

Wikipedia citations show up by the hundreds in cases,<sup>15</sup> by the thousands in law review articles,<sup>16</sup> and in countless numbers of legal briefs.<sup>17</sup> Courts have also cited similar websites, like Wiktionary—the online dictionary equivalent of Wikipedia<sup>18</sup>—

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<sup>7</sup> Jefferson v. Astrue, No. 3:06cv1729 (MRK) (WIG), 2008 U.S. Dist. LEXIS 26020, at \*7 n.7 (D. Conn. Mar. 11, 2008).

<sup>8</sup> Tilton v. Playboy Entm’t Group, Inc., 510 F. Supp. 2d 932, 935 n.4 (M.D. Fla. 2007).

<sup>9</sup> See Wikipedia, *Wikipedia*, <http://en.wikipedia.org/wiki/Wikipedia> (as of Apr. 12, 2010, 11:18 GMT).

<sup>10</sup> Cade Metz, *Google and the Great Wikipedia Feedback Loop*, THE REGISTER, Jan. 26, 2009, [http://www.theregister.co.uk/2009/01/26/britannica\\_slaps\\_google/](http://www.theregister.co.uk/2009/01/26/britannica_slaps_google/).

<sup>11</sup> Noam Cohen, *Courts Turn to Wikipedia, but Selectively*, N.Y. TIMES, Jan. 29, 2007 (“I love Wikipedia, but I don’t think it is yet time to cite it in judicial decisions . . . .”) (quoting Cass R. Sunstein).

<sup>12</sup> Brian Leiter, *545 Law Review Articles Cite Wikipedia!*, BRIAN LEITER’S LAW SCHOOL REPORTS, Feb. 5, 2007, [http://leiterlawschool.typepad.com/leiter/2007/02/545\\_law\\_review\\_html](http://leiterlawschool.typepad.com/leiter/2007/02/545_law_review_html) (stating that professors who cite Wikipedia “should presumably be blacklisted from scholarly careers”).

<sup>13</sup> Many practitioners also share this view. See, e.g., Sean Smith, *The Case for Using, but Not Citing, Wikipedia*, THE PROSECUTOR, Oct.–Dec. 2008, at 31, 47 (“Wikipedia simply should not be cited by lawyers making arguments.”).

<sup>14</sup> *In re Cessna 208 Series Aircraft Prods. Liab. Litig.*, No. 05-md-1721-KHV, 2009 U.S. Dist. LEXIS 81932, at \*28–29 n.3 (D. Kan. Sept. 9, 2009).

<sup>15</sup> “Wikipedia” had 606 cites in the federal and state cases database on LexisNexis as of April 11, 2010.

<sup>16</sup> Wikipedia had 2086 document cites in Westlaw’s Journals and Law Reviews (JLR) database as of April 18, 2010. See, e.g., Jason C. Miller, Note, *Regulating Robocalls: Are Automated Calls the Sound of, or a Threat to, Democracy?*, 16 MICH. TELECOMM. & TECH. L. REV. 213, 214 n.8 (2009) (using Wikipedia to show common spelling of a new word).

<sup>17</sup> For example, Wikipedia had 542 cites in the All-Briefs feature on Westlaw and forty-two document cites in the LexisNexis database of Supreme Court briefs as of April 18, 2010. These databases only capture a fraction of the briefs filed in courts throughout the country.

<sup>18</sup> Wiktionary had thirteen cites in the federal and state cases database on LexisNexis as of April 18, 2010.

and Urban Dictionary<sup>19</sup>—a site where users can submit definitional entries and voice their agreement or disagreement with a definition.<sup>20</sup> Courts have relied on Urban Dictionary to define slang words or phrases, such as “blunt,”<sup>21</sup> “kite,”<sup>22</sup> “mugging,”<sup>23</sup> “Detroit Lean,”<sup>24</sup> “freaking,”<sup>25</sup> “sugar free,”<sup>26</sup> “jacked,”<sup>27</sup> “ho,”<sup>28</sup> “don’t trip,”<sup>29</sup> and “shoulder tap.”<sup>30</sup> Yet, intuitively, there is a difference between relying on a source that anyone can edit to define slang and relying on that same source to define the contours of a technical term like the “xyphoid process.”<sup>31</sup> When a court seeks to determine the common meaning of a term or expression, a website that anyone can edit is likely to produce a viable consensus answer. On the other hand, encyclopedia articles on scientific matter may be less likely to benefit from the consensus wisdom of a large group of online reader-editors—benefiting from the so called “wisdom of the

<sup>19</sup> UrbanDictionary had twenty-seven cites in federal and state cases database on LexisNexis as of April 18, 2010.

<sup>20</sup> Other wiki-style websites exist and even more may spring up in the future. See, e.g., Michael J. Tonsing, *The Wiki Family of Web Sites*, 56 FED. LAW., July 2009, at 14, 14–43 (listing various wiki websites); Robert J. Ambrogi, *Where There's a Wiki, There's a Way*, 64 BENCH & B. MINN., May–June 2007, at 14, 14–15 (listing other law-focused wiki websites).

<sup>21</sup> *Pole v. Randolph*, 570 F.3d 922, 945 n.10 (7th Cir. 2009), cert. denied, 130 S. Ct. 562 (2009) (“[A] blunt is a cigar that has been hollowed out and refilled with marijuana.”); *State v. Odom*, 656 S.E.2d 748, 750 n.1 (S.C. Ct. App. 2007), cert. denied, 2008 S.C. LEXIS 310 (Sept. 17, 2008) (noting the history of the term blunt).

<sup>22</sup> *United States v. Parker*, No. 8:09-CR-0162 (GTS), 2009 U.S. Dist. LEXIS 69056, at \*38 n.10 (N.D.N.Y. Aug. 7, 2009) (a correspondence sent to or from a prisoner).

<sup>23</sup> *Strope v. Pettis*, No. 03-3383-JAR, 2004 U.S. Dist. LEXIS 24332, at \*31 n.62 (D. Kan. Nov. 23, 2004) (staring at someone in a threatening way).

<sup>24</sup> *Crosby v. State*, 970 A.2d 894, 900 n.12 (Md. 2009) (a slouching driving posture).

<sup>25</sup> *Eiter v. Three Rivers Fed. Credit Union*, No. 1:05-CV-418, 2006 U.S. Dist. LEXIS 86147, at \*23 (N.D. Ind. Nov. 27, 2006) (determining that “freaking” is a curse word).

<sup>26</sup> *EEOC v. Family Dollar Stores of Ga., Inc.*, No. 1:06-CV-2569-TWT/AJB, 2008 U.S. Dist. LEXIS 109045, at \*19–20 n.11 (N.D. Ga. July 30, 2008) (“without a significant other”).

<sup>27</sup> *United States v. Genovese*, 409 F. Supp. 2d 253, 257 n.3 (S.D.N.Y. 2005) (stolen).

<sup>28</sup> *Dorn v. State*, 819 N.E.2d 516, 519 (Ind. Ct. App. 2004) (prostitute).

<sup>29</sup> *Crystal C. v. Crystal C.*, 2006 Cal. App. Unpub. LEXIS 511, at \*4 n.2 (Cal. Ct. App. Jan. 20, 2006) (to not worry or freak out).

<sup>30</sup> *In re Jennings*, 95 P.3d 906, 911 (Cal. 2004) (asking an older person to buy alcohol).

<sup>31</sup> See *Wright v. Barnhart*, No. 3:05CV1487 (SRU) (WIG), 2006 U.S. Dist. LEXIS 97239, at \*14 n.6 (D. Conn. Dec. 14, 2006).

crowd”—because lay editors may be ill-equipped to provide valuable contributions or remove inaccurate information. Similarly, articles on controversial topics and individuals may be edited by partisans, which raises reliability concerns that typically do not accompany easily verifiable or uncontentious articles. To date, few courts have articulated these differences.

Accordingly, this Article lays out a process for determining when it is and when it is not appropriate to cite Wikipedia and other similar online sources. Part II reviews the history of Wikipedia and controversies caused by citing it. Part III offers a proper citation format and proposes a common sense framework to decide when citing Wikipedia is appropriate. Part IV applies this framework in the context of a variety of actual court cases that cited Wikipedia and shows how the same concepts apply to other consensus-based websites like Urban Dictionary.

## II. HISTORY OF WIKIPEDIA, THE FREE ENCYCLOPEDIA

### A. *Why We Use Wikipedia*

Wikipedia is a free, online encyclopedia.<sup>32</sup> Through the assistance of volunteers, the English language site<sup>33</sup> currently includes more than three million articles, making Wikipedia “the most useful encyclopedia ever written.”<sup>34</sup> The name Wikipedia is a portmanteau of wiki, a technology allowing online collaboration, and encyclopedia.<sup>35</sup> Wikipedia’s founders sought to make a “publicly editable encyclopedia” and decided to use a wiki to accomplish that goal.<sup>36</sup> While Wikipedia does rely heavily on the work of volunteers and online collaborators, it still requires operational funds for a small staff and administrative costs.<sup>37</sup> Funding for Wikipedia comes from the nonprofit Wikimedia

<sup>32</sup> Wikipedia, *Wikipedia*, *supra* note 9.

<sup>33</sup> Wikipedia is currently available in 266 languages. See Wikipedia, *List of Wikipedias*, [http://en.wikipedia.org/wiki/List\\_of\\_Wikipedias](http://en.wikipedia.org/wiki/List_of_Wikipedias) (as of Apr. 12, 2010, 16:21 GMT). Each language site contains independent articles. See, Wikipedia, *Wikipedia: License and Language Editions*, [http://en.wikipedia.org/wiki/Wikipedia#License\\_and\\_language\\_editions](http://en.wikipedia.org/wiki/Wikipedia#License_and_language_editions) (as of Apr. 12, 2010, 14:34 GMT).

<sup>34</sup> LAWRENCE LESSIG, CODE: VERSION 2.0 243 (2006).

<sup>35</sup> Wikipedia, *Wikipedia*, *supra* note 9.

<sup>36</sup> Wikipedia, *Wikipedia: History*, <http://en.wikipedia.org/wiki/Wikipedia#History> (as of Apr. 12, 2010, 14:34 GMT).

<sup>37</sup> See Wikipedia, *Wikipedia: Operation*, <http://en.wikipedia.org/wiki/Wikipedia#Operation> (as of Apr. 12, 2010, 14:34 GMT) (“Wikipedia . . . is funded by the Wikimedia Foundation, a non-profit organization . . .”).

Foundation,<sup>38</sup> which in turn relies on private donations and grants to meet operating expenses.<sup>39</sup> In addition to Wikipedia, Wikimedia also operates several other wiki projects.<sup>40</sup>

Wikipedia volunteers create and edit the encyclopedia's content,<sup>41</sup> replacing traditional encyclopedia editors with thousands upon thousands of online editors around the world. These volunteer editors may submit content as registered members or anonymous contributors.<sup>42</sup> The information becomes immediately available as soon as an editor generates content for an existing or new article.<sup>43</sup> Whenever a modification is made, the modifier's identity—or IP address for anonymous contributors—and a summary of the modification becomes available on the “history” tab of the article.<sup>44</sup> In addition to the history tab, the “discussion” tab provides a forum for multiple editors to organize collaborative revisions or expansions to a given article.<sup>45</sup> Registered and anonymous editors may revise essentially every article<sup>46</sup> and, as a result, Internet scholars have

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<sup>38</sup> See *id.* Wikimedia Foundation is a 501(c)(3) nonprofit charitable corporation. Wikimedia Foundation, Frequently Asked Questions: Are You a Charity?, [http://wikimediafoundation.org/wiki/Frequently\\_Asked\\_Questions#Are\\_you\\_a\\_charity.3F](http://wikimediafoundation.org/wiki/Frequently_Asked_Questions#Are_you_a_charity.3F) (last visited Apr. 12, 2010). The authors note that while Wikimedia Foundation pages appear similar to Wikipedia pages, the Bluebook citation format is appropriate. Wikimedia pages are not compiled by online editors, and thus do not necessitate the precautionary step of including timestamp information.

<sup>39</sup> See Wikimedia Foundation, Frequently Asked Questions: Are You a Charity?, *supra* note 38; see also Eric Krangel, *Wikipedia Raises \$6.2 Million from Users: Pledge Drive Success*, BUS. INSIDER, Jan. 2, 2009, available at <http://www.businessinsider.com/2009/1/wikipedia-raises-62-million>.

<sup>40</sup> See Wikimedia Foundation, Our Projects, [http://wikimediafoundation.org/wiki/Our\\_projects](http://wikimediafoundation.org/wiki/Our_projects) (last visited Apr. 12, 2010). Similar to Wikipedia, a portmanteau of wiki and encyclopedia, the other Wikimedia ventures are similarly named and include Wiktionary, Wikiquote, Wikibooks, Wikisources, Wikispecies, Wikinews, Wikiversity, and Wikimedia Commons. See *id.*

<sup>41</sup> Wikipedia, *Wikipedia*, *supra* note 9.

<sup>42</sup> Contributions made by unregistered or anonymous users display the Internet Protocol (“IP”) address associated with the computer where the user generated the content. This IP address can be used to track the locale, and possibly the identity, of the contributor.

<sup>43</sup> Wikipedia, *Wikipedia: Editing Model*, [http://en.wikipedia.org/wiki/Wikipedia#Editing\\_model](http://en.wikipedia.org/wiki/Wikipedia#Editing_model) (as of Apr. 12, 2010, 14:34 GMT).

<sup>44</sup> See *id.*

<sup>45</sup> See *id.*

<sup>46</sup> Some entries require special access. Traditionally, these are entries that have been prone to vandalism in the past. The Wikipedia community now includes a clear editorial chain of command that can exercise editorial control. Wikipedia, *Wikipedia: Community*, [http://en.wikipedia.org/wiki/Wikipedia#Editing\\_model](http://en.wikipedia.org/wiki/Wikipedia#Editing_model) (as of Apr. 12, 2010, 14:34 GMT).

identified Wikipedia as “[t]he most extraordinary collaborative process,”<sup>47</sup> with content that continues to grow.<sup>48</sup>

As Wikipedia continues to amass more content, readership also continues to increase. Wikipedia is one of the top-ten most-visited websites worldwide,<sup>49</sup> and the reader base includes more than one-third of the American public annually.<sup>50</sup> Despite its popularity, Wikipedia is not uniformly accepted as a legitimate source for research. Concerns over the encyclopedia’s reliability persist, and Wikipedia itself notes that content found on Wikipedia is inappropriate as a primary research source.<sup>51</sup> Indeed, the encyclopedia includes a number of articles advising readers that they assume all risks associated with relying on the site’s content.<sup>52</sup> Obviously, the concern regarding Wikipedia’s reliability stems from the unique process of content generation that allows essentially anonymous individuals to create and update articles. Given the apprehension over reliability, Wikipedia has instituted several measures to ensure and improve reliability.<sup>53</sup> For example, once a particular article

<sup>47</sup> LESSIG, *supra* note 34.

<sup>48</sup> The time between every ten-millionth edit plateaued in July 2005 to approximately fifty days. See Wikipedia, *File: Time Between Edits Graph Jul05-Present.png*, [http://en.wikipedia.org/wiki/File:Time\\_Between\\_Edits\\_Graph\\_Jul05-Present.png](http://en.wikipedia.org/wiki/File:Time_Between_Edits_Graph_Jul05-Present.png) (as of Dec. 27, 2009, 13:15 GMT).

<sup>49</sup> See Alexa, Top Sites: The top 500 sites on the web, <http://www.alexa.com/topsites> (last visited Apr. 16, 2010). Alexa tabulates the top sites list monthly via a formulation that considers average daily visitors and page views. See *id.* (place cursor over the question mark symbol adjacent to “Top Sites: The top 500 sites on the web” title bar); see also PEW INTERNET & AMERICAN LIFE PROJECT, WIKIPEDIA USERS 5 (2007), available at <http://www.pewinternet.org/Reports/2007/Wikipedia-users/Data-Memo.aspx?r=1> [hereinafter PEW SURVEY].

<sup>50</sup> See PEW SURVEY, *supra* note 49, at 3.

<sup>51</sup> Wikipedia advises its readers not to use the encyclopedia by itself for primary research because “not everything in Wikipedia is accurate, comprehensive, or unbiased.” Wikipedia, *Wikipedia: Researching with Wikipedia*, [http://en.wikipedia.org/wiki/Wikipedia:Researching\\_with\\_Wikipedia](http://en.wikipedia.org/wiki/Wikipedia:Researching_with_Wikipedia) (as of Mar. 30, 2010, 21:33 GMT).

<sup>52</sup> See, e.g., Wikipedia, *Wikipedia: Risk Disclaimer*, [http://en.wikipedia.org/wiki/Wikipedia:Risk\\_disclaimer](http://en.wikipedia.org/wiki/Wikipedia:Risk_disclaimer) (as of Jan. 28, 2010, 14:42 GMT) (“PLEASE BE AWARE THAT ANY INFORMATION YOU MAY FIND IN WIKIPEDIA MAY BE INACCURATE, MISLEADING, DANGEROUS, ADDICTIVE, UNETHICAL OR ILLEGAL.”); Wikipedia, *Wikipedia: Medical Disclaimer*, [http://en.wikipedia.org/wiki/Wikipedia:Medical\\_disclaimer](http://en.wikipedia.org/wiki/Wikipedia:Medical_disclaimer) (as of Feb. 10, 2010, 12:31 GMT); Wikipedia, *Wikipedia: Legal Disclaimer*, [http://en.wikipedia.org/wiki/Wikipedia:Legal\\_disclaimer](http://en.wikipedia.org/wiki/Wikipedia:Legal_disclaimer) (as of Jan. 4, 2010, 20:57 GMT).

<sup>53</sup> See, e.g., Wikipedia, *View Source*, <http://en.wikipedia.org/w/index.php?title=Wikipedia&action=edit> (as of Apr. 17, 2010, 02:33 GMT).

becomes a repeated target for content vandalism, only approved editors retain authorization to add or modify content.<sup>54</sup> Individuals not affiliated with Wikipedia have also made efforts to ensure content reliability.<sup>55</sup> Yet despite the continued expansion of content and readership, the implementation of a range of reliability measures, and the willingness of some academics to acknowledge the benefits of using Wikipedia in legal research,<sup>56</sup> skepticism about Wikipedia's reliability persists.

### B. *A Split of Opinion on Wikipedia*

Many nonlegal professions distrust Wikipedia and consider citing it inappropriate<sup>57</sup> or even shocking.<sup>58</sup> Some academics have actually banned citation of Wikipedia in their students' work.<sup>59</sup> The legal profession can be just as hostile, with some claiming that including Wikipedia as a source in pleadings and opinions is reckless and improper.<sup>60</sup>

Courts have also been dismissive towards Wikipedia articles when parties offer them into evidence.<sup>61</sup> Judicial objections have focused on the indiscriminate ability to edit the encyclopedia<sup>62</sup> as

<sup>54</sup> See *id.* (“[T]his page is currently semi-protected and can be edited only by established registered users.”).

<sup>55</sup> See, e.g., Diane Murley, *In Defense of Wikipedia*, 100 L. LIBR. J. 593, 596 (2008) (describing the efforts of a graduate student to start a service that compares the IP addresses of anonymous posters to known corporate IP addresses).

<sup>56</sup> See, e.g., Frederick Schauer, *Authority and Authorities*, 94 VA. L. REV. 1931, 1955 n.77 (2008) (outlining the possibility of Wikipedia's “comparative advantage of the authority over the author, and maybe even the comparative advantage of the authority over (some) other authorities”).

<sup>57</sup> Daniel E. Harmon, *Information at Issue: Observations on the World of Wikis*, L. PC, Apr. 2008, at 5 (“I know educational book publishers that sternly forbid their authors and fact checkers to use Wikipedia as a source.”).

<sup>58</sup> Chelsea Schilling, *Shocking Trend: U.S. Courts Citing Wikipedia*, WORLDNETDAILY, Sept. 5, 2008, <http://www.wnd.com/index.php?pageId=74342>.

<sup>59</sup> “For example, the history department at Middlebury College . . . banned the citation of Wikipedia in papers and examinations.” *Alfa Corp. v. OAO Alfa Bank*, 475 F. Supp. 2d 357, 362 n.2 (S.D.N.Y. 2007) (citing Noam Cohen, *A History Department Bans Citing Wikipedia as a Research Source*, N.Y. TIMES, Feb. 21, 2007, at B8).

<sup>60</sup> Smith, *supra* note 13, at 46 (“But is citing Wikipedia in a legal brief or to a court in oral argument proper? Probably not—in fact, I strongly recommend never citing to Wikipedia for any argument, let alone in a legal context.”); R. Jason Richards, *Courting Wikipedia*, TRIAL, Apr. 2008, at 62, 63 (“[R]elying on it as an authoritative source in legal pleadings and opinions is reckless.”).

<sup>61</sup> *United States v. Allen*, 290 F. App'x 103, 106 (10th Cir. 2008) (placing quotation marks around the word “evidence” in a mocking tone).

<sup>62</sup> “‘Since when did a Web site that any Internet surfer can edit become an authoritative source by which law students could write passing papers, experts could



well as the presence of disclaimers to that effect.<sup>63</sup> Notable inaccuracies—such as listing conservative commentator and Michigan Law graduate Ann Coulter as a former clerk to Judge Posner—add credence to these concerns.<sup>64</sup> Even when a court acknowledges a party's use of Wikipedia, it might do so without fully crediting the article.<sup>65</sup> Other courts have directly called Wikipedia a questionable source, even going so far as to exclude expert testimony that relied in part on Wikipedia.<sup>66</sup> Perhaps because of these concerns, some courts appear almost afraid to cite Wikipedia even when they are in fact referencing it.<sup>67</sup> In 2005, the Tennessee Court of Appeals concluded that Wikipedia was not “persuasive authority” because the court believed other courts had not cited Wikipedia.<sup>68</sup> Since 2005, though, a steady stream of courts have turned to Wikipedia.<sup>69</sup>

One court noted that “the frequent citation of *Wikipedia* at least suggests that many courts do not consider it to be

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provide credible testimony, lawyers could craft legal arguments, and judges could issue precedents?” *Badasa v. Mukasey*, 540 F.3d 909, 910 (8th Cir. 2008) (quoting Richards, *supra* note 60, at 62).

<sup>63</sup> See *Campbell v. Sec'y of Health & Human Servs.*, 69 Fed. Cl. 775, 781 (Fed. Cl. 2006) (observing that a review of the Wikipedia website “reveals a pervasive and, for our purposes, disturbing series of disclaimers”).

<sup>64</sup> Cohen, *supra* note 11.

<sup>65</sup> See, e.g., *McNeal v. Losee*, No. 08-2472-CM, 2009 U.S. Dist. LEXIS 46563, at \*19 (D. Kan. June 3, 2009) (stating, in reference to a Wikipedia document submitted by the plaintiff, that “*even if these statistics are accurate*” they are insufficient to establish plaintiff's claim (emphasis added)).

<sup>66</sup> See *In re Cessna 208 Series Aircraft Prods. Liab. Litig.*, No. 05-md-1721-KHV, 2009 U.S. Dist. LEXIS 81932, at \*28–29 n.3 (D. Kan. Sept. 9, 2009) (“Dr. Hildebrand also has used data from questionable sources. *Jane's All the World's Aircraft* and *Wikipedia* are not reliable sources for research on aerodynamics and aircraft design.”). *But see Alfa Corp. v. Oao Alfa Bank*, 475 F. Supp. 2d 357, 362–63 (S.D.N.Y. 2007) (admitting testimony of expert who used Wikipedia in part).

<sup>67</sup> See *Mei v. City of New York*, No. 06 Civ. 00296 (CM), 2006 U.S. Dist. LEXIS 75871, at \*27 n.3 (S.D.N.Y. Oct. 5, 2006) (using a Wikipedia quote contained in plaintiff's complaint); *Fink v. Time Warner Cable*, No. 08 Civ. 9628 (LTS) (KNF), 2009 U.S. Dist. LEXIS 63708, at \*5–6 (S.D.N.Y. July 23, 2009) (referencing a Wikipedia quote in complaint).

<sup>68</sup> *English Mountain Spring Water Co. v. Chumley*, 196 S.W.3d 144, 149 (Tenn. Ct. App. 2005). By this time, federal courts—such as the Eleventh Circuit—and state courts—such as the Michigan Supreme Court—had already turned to Wikipedia, although the citations were few in number.

<sup>69</sup> See, e.g., *Mei*, 2006 U.S. Dist. LEXIS 75871, at \*27 n.3 (using a Wikipedia quote contained in plaintiff's complaint); *Alfa Corp.*, 475 F. Supp. 2d at 362–63 (admitting testimony of expert who used Wikipedia in part); *Fink*, 2009 U.S. Dist. LEXIS 63708, at \*5–6 (referencing a Wikipedia quote in the complaint).

inherently unreliable.”<sup>70</sup> Wikipedia’s reliability was recognized outside of the legal context as well: “In fact, a recent and highly-publicized analysis in the magazine *Nature* found that the error rate of Wikipedia articles was not significantly greater than in those of the *Encyclopedia Britannica*.”<sup>71</sup> Even so, the concerns that animate the opponents of citing Wikipedia are not alleviated with a comparison to other sources or increasing popularity in courts. In fact, supporters of citing Wikipedia often limit its value. Defenders like Judge Posner, who say “Wikipedia is a terrific resource,” also say that “[i]t wouldn’t be right to use it in a critical issue.”<sup>72</sup> Many think that Wikipedia should be used for “soft issues”<sup>73</sup> and “shouldn’t be trusted as the only source on which to make major decisions.”<sup>74</sup> Professor Gillers argues that Wikipedia is best used for “soft facts” not central to the reasoning of a decision.<sup>75</sup>

But the legal profession need not endorse a black-or-white rule for citing Wikipedia. It may be appropriate to cite Wikipedia in some circumstances, including for certain major issues and inappropriate in others. Legal context and the structural limits of Wikipedia both influence the appropriateness of citation. We advise that Professor Anupam Chandler’s nuanced take is more accurate: “Wikipedia is an amazing resource, worthy of citation by a critical user—just like many traditional published sources.

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<sup>70</sup> *Alfa Corp.*, 475 F. Supp. 2d at 362. Professor Eugene Volokh notes that Wikipedia may be as reliable as a typical newspaper article, pointing out that newspapers employ “generalist reporters who are relying on hastily assembled materials from others.” Posting of Eugene Volokh to The Volokh Conspiracy, <http://www.volokh.com/posts/1181002366.shtml> (June 4, 2007, 08:12 EST).

<sup>71</sup> *Alfa Corp.*, 475 F. Supp. 2d at 362 (“[T]he difference in accuracy was not particularly great: the average science entry in Wikipedia contained around four inaccuracies; Britannica, about three.” (quoting Jim Giles, *Internet Encyclopedias Go Head to Head*, NATURE, Dec. 14, 2005, <http://www.nature.com/news/2005/051212/full/438900a.html>)).

<sup>72</sup> Cohen, *supra* note 11.

<sup>73</sup> Wade Thomson, *Wikijurisprudence—References to Wikipedia in the Law*, MEDIA LAW RESOURCE CENTER (July 2009) available at [http://www.jenner.com/files/tbl\\_s20Publications/RelatedDocumentsPDFs1252/2572/MLRC%20Internet%20Law%20Comm%20Report\\_August09.pdf](http://www.jenner.com/files/tbl_s20Publications/RelatedDocumentsPDFs1252/2572/MLRC%20Internet%20Law%20Comm%20Report_August09.pdf) (predicting continued reliance on Wikipedia for soft facts).

<sup>74</sup> Mike Masnick, *Should Judges Cite Wikipedia?*, TECHDIRT, Jan. 29, 2007, <http://www.techdirt.com/articles/20070129/014256.shtml>.

<sup>75</sup> Cohen, *supra* note 11. Since we initially wrote this Article, Lee Peoples, a law librarian at the University of Oklahoma, has also weighed in, similarly arguing that courts should not use Wikipedia for major decisions. Lee F. Peoples, *The Citation of Wikipedia in Judicial Opinions*, 12 YALE J.L. & TECH. 1, 50 (2009).

In some cases it may be more trustworthy than traditional sources—typically issues where there is likely to be a wealth of knowledge and passion among netizens—, while in others less.”<sup>76</sup>

Separate from the broader fear of inaccuracies is the belief that parties will alter Wikipedia articles while a case is pending to reflect their preferred outcome or alter an article that another party relied on and brought to the court’s attention.<sup>77</sup> One writer sarcastically noted that “there are definite advantages to being able to cite an authority that you can always rewrite to suit your current needs.”<sup>78</sup> Our proposal should mitigate these fears, first by explaining how to cite Wikipedia to minimize opportunities for later shenanigans and then by describing a method to identify whether an article is an appropriate source.

### III. RULES OF ENGAGEMENT

#### A. *How To Cite*

Given the inconsistent ways that courts have cited Wikipedia,<sup>79</sup> the law needs a single style of citation that is similar to existing styles for internet sources but recognizes the changes to Wikipedia articles over time. The *Harvard Journal of Law and Technology* has developed exactly such a format, which Wikipedia endorses:

[*Signal*] Wikipedia, [*article*], [http://en.wikipedia/wiki/\[article\]](http://en.wikipedia/wiki/[article])  
[(optional other parenthetical)] (as of [date], [time] GMT).

Here is an example:

<sup>76</sup> Anupam Chandler, *Judge Posner and Other Federal Judges Cite Wikipedia in Decisions*, Jan. 30, 2007, [http://www.chander.com/2007/01/judge\\_posner\\_an.html](http://www.chander.com/2007/01/judge_posner_an.html).

<sup>77</sup> See Bryan C. Berman, Note, *You Can't Trademark That! Wikipedia Said So*, 30 WHITTIER L. REV. 825, 826 (2009). This fear may be overstated because subsequent editors may quickly or instantly undo the damage done by parties seeking to rewrite an entry in their favor.

<sup>78</sup> Elise Hendrick, *Wikipedia: The New Consensual Reality*, 11 GREEN BAG 2D 187, 188 (2008).

<sup>79</sup> Compare *Rochester Gas & Elec. Corp. v. Delta Star, Inc.*, No. 06-CV-6155-CJS-MWP, 2009 U.S. Dist. LEXIS 11489, at \*5 n.2 (W.D.N.Y. Feb. 13, 2009) (“Hurricane Katrina, Wikipedia (available at [http://en.wikipedia.org/wiki/Katrina\\_Hurricane](http://en.wikipedia.org/wiki/Katrina_Hurricane)), last accessed on July 11, 2008.”), with *United States v. Yazzen*, 187 F. App'x 800, 802 n.1 (10th Cir. 2006) (“Wikipedia, the Free Encyclopedia, at [http://en.wikipedia.org/wiki/Pink\\_elephant](http://en.wikipedia.org/wiki/Pink_elephant) (last visited June 27, 2006).”) and *EMI Entm't World, Inc. v. Priddis Music, Inc.*, 505 F. Supp. 2d 1217, 1219 n.1 (D. Utah 2007) (“‘Karaoke,’ at <http://en.wikipedia.org/wiki/Karaoke>.”).

See Wikipedia, *Bluebook*, <http://en.wikipedia.org/wiki/Bluebook> (describing history and application of the Bluebook) (as of Mar. 21, 2006, 20:50 GMT).

This format derives from Rule 18.2 of the 18th edition of the *Bluebook*, though the date parenthetical differs slightly. The parenthetical here is designed to specify the exact version of the article to which the author is referring, recognizing that articles can and do change often. The date and time used should correspond exactly to the latest version listed in the article's Wikipedia history page that states the proposition for which you are citing it. Use of GMT conforms to the timestamp format used in those history entries (e.g., use 24-hour notation to avoid AM/PM).<sup>80</sup>

Users can find the timestamp by clicking the history tab at the top of an article. The first timestamp listed is the latest change to the article. A later reader can, if so inclined, go back into the history of the article and read the exact version cited, even if the current version has changed. Thus the time stamp is a critical feature in directing the reader to the information the author references. It should remove some concern about future tampering because later readers can view the article exactly as cited, regardless of subsequent modifications.<sup>81</sup>

While a slightly shorter version could provide all the relevant information,<sup>82</sup> some courts have used citations that are simply too short.<sup>83</sup> Given the need to direct readers to the cited

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<sup>80</sup> Wikipedia, *Wikipedia: Citing Wikipedia: Citation to Wikipedia*, [http://en.wikipedia.org/wiki/Wikipedia:Citing\\_Wikipedia#Citation\\_to\\_Wikipedia](http://en.wikipedia.org/wiki/Wikipedia:Citing_Wikipedia#Citation_to_Wikipedia) (as of Feb. 12, 2010, 18:03 GMT); see also Bluebook Citation to Wikipedia, <http://bcipf.org/blog/2006/08/30/bluebook-citation-to-wikipedia/> (as of Aug. 30, 2006, 08:24 EST) (praising Harvard style).

<sup>81</sup> The reader can use the IP address of the editor to locate the editor and investigate tampering, if necessary.

<sup>82</sup> The title of a Wikipedia entry is reflected in the URL, thus a shorter citation would convey the same information. See, e.g., *Royster v. Williams*, No. 08-CV-1367 (CBA), 2008 U.S. Dist. LEXIS 31781, at \*4 n.1 (E.D.N.Y. Apr. 17, 2008) (“<http://en.wikipedia.org/wiki/Rochdale>, Queens (last visited April 16, 2008).”). However, for the sake of being consistent with other website citations, we believe the legal profession should use the Harvard style, placing Wikipedia and the title of the article before the URL.

<sup>83</sup> For example, some cases do not offer the specific URL or name of the article in the citation. See *Topps Co. v. Cadbury Stani S.A.I.C.*, 454 F. Supp. 2d 89, 90 n.1 (S.D.N.Y. 2006) (“Wikipedia, the Free Encyclopedia (<http://en.wikipedia.org>) (visited July 25, 2006).”), *rev'd on other grounds*, 526 F.3d 63 (2d Cir. 2008). Other cases fail to provide a date. See *Montalvo v. Barnhart*, 457 F. Supp. 2d 150, 170 (W.D.N.Y.

information in a consistent way, courts, practitioners, scholars—and even the Blue Book—should all adopt the *Harvard Journal of Law and Technology's* style as the proper citation method.<sup>84</sup>

*B. When It Is Appropriate To Cite Wiki*

We propose that it is appropriate to cite Wikipedia when it is suitable to cite the wisdom of the crowd. The wisdom of the crowd is an appropriate and valuable reference when consensus itself is at issue, the information is generally known, or the content is easily verifiable.

Wikipedia's greatest weakness—that anybody can edit an article—is also its greatest strength.<sup>85</sup> The collaboration of online editors allows Wikipedia to offer consensus definitions of words and phrases. When the common definition or meaning of a phrase is at issue, definitions as agreed upon by the consensus of the Wikipedia community may be quite useful. For example, we can imagine a simple contract case where the dispute turns on whether a party acted on a business day. Wikipedia's definition of what is and is not a business day—in essence the community's definition—is quite helpful in this context.

The availability of millions of editors also provides a method for correcting errors. If one editor attributes the wrong state bird to Ohio, any other reader can come along and fix this mistake<sup>86</sup>

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2005) ("<http://en.wikipedia.org/wiki/Decompensation>."); *id.* at 162 n.6 ("GLOBAL ASSESSMENT OF FUNCTIONING, available at [http://en.wikipedia.org/wiki/Global\\_Assessment\\_of\\_Functioning](http://en.wikipedia.org/wiki/Global_Assessment_of_Functioning)").

<sup>84</sup> Accordingly, this Article uses this format for all Wikipedia citations.

<sup>85</sup> Select entries, however, are locked against editing because of persistent controversy and vandalism, but these are few. For instance, the entry on Israel is semi-protected and can be edited only by established registered users. Wikipedia, *Editing Israel*, <http://en.wikipedia.org/w/index.php?title=Israel&action=edit> (as of July 18, 2010, 15:20 GMT); see also Wikipedia, *Wikipedia: Protection Policy*, [http://en.wikipedia.org/wiki/Wikipedia:Protection\\_policy](http://en.wikipedia.org/wiki/Wikipedia:Protection_policy) (as of Apr. 6, 2010, 16:22 GMT).

<sup>86</sup> In practice, most of the small fixes are performed by a group of zealous editors who follow particular pages and categories rather than the average reader. See, e.g., Henry Blodget, *Who the Hell Writes Wikipedia, Anyway?*, BUS. INSIDER, Jan. 3, 2009, <http://www.businessinsider.com/2009/1/who-the-hell-writes-wikipedia-anyway>. Some have criticized the lack of diversity among this core group of editors and questioned the reliability of Wikipedia in general. See Evgeny Morozov, *Edit This Page: Is It the End of Wikipedia?*, BOSTON REV., Nov. 2009, <http://bostonreview.net/BR34.6/morozov.php>. We are not persuaded that a disproportionately male editorial base renders Wikipedia—which still includes many female editors—any more unreliable than a newspaper article because of the author's gender.

because the state bird is generally known to at least some of the residents of Ohio, bird-watchers, and trivia buffs.

The ability of later reader-editors to fix erroneous information is highest when the information is easily verifiable and lowest when it is highly technical or complex. It is easy for any subsequent editor to verify that Hudsonville, Michigan is located within Ottawa County by checking an online map or the county website. Similarly, well-referenced census data is easily verified by any number of later readers.

### *C. When It Is Inappropriate To Cite Wikipedia*

Obviously the wisdom of the crowd does not exist when there is no crowd—for example, with respect to articles on topics too obscure or technical to draw many reader-editors—or when the crowd is so inflamed as to be biased or lack consensus. A smaller pool of reader-editors means less collaboration and thus, presumably, less reliability. Nonscientists can edit scientific articles, adding errors and mistakes, but later nonscientist editors might not know enough to catch the mistake. By applying a little common sense, legal writers can generally identify whether more or less reader-editors will be drawn to a topic. Information on cities in French-speaking Africa—population, geography, city logo—is likely to be less easy to verify by English-speaking Wikipedia editors and may be less likely to draw editors from within those African cities to the English-language Wikipedia at this point. Personal biographies are also difficult for outsiders to verify. The job a minor celebrity held before achieving fame is neither common knowledge nor easily verified by editors.

Biographical articles present multiple problems. In addition to a potentially more limited pool of knowledgeable reader-editors, biographical articles may also be subject to a greater risk of bias. Editors may have a personal interest in making themselves—or someone else—sound better—or worse—on Wikipedia. The same can be said of any controversial topic—who started a war, the founding of Israel, the truth of an accusation against a politician—where too many editors have a personal stake, and the truth of the matter is shaded by each side's opinion, and difficult to verify. For these same reasons, historical articles may be unreliable. In some cases, the line is difficult to draw between appropriate and inappropriate use, such as when a

commonly-known industrial term blends into technical jargon. In these cases, the more general the information is and the more potential reader-editors, the more courts should be willing to rely on it. Moreover, in questionable areas legal writers should consider whether an alternative, more accepted source is readily available.

#### IV. APPLICATION TO CASES

Wikipedia references may work their way into judicial opinions without courts relying on them at all. In cases where the parties submit Wikipedia articles as evidence,<sup>87</sup> the cause of action involves Wikipedia,<sup>88</sup> or Wikipedia has some other direct relationship to the case,<sup>89</sup> reliability concerns do not arise. This Part focuses on a specific group of cases where courts actually rely on or point readers directly to Wikipedia.<sup>90</sup>

##### A. *Good*

Wikipedia is an appropriate source when the wisdom of the crowd is valuable on its own. More specifically, citing Wikipedia works when a consensus definition is needed, the information is easily verifiable, or the reference is offered for a general context purpose.

Because Wikipedia is a collaborative encyclopedia, it is appropriate to rely on Wikipedia where common understanding is at issue. Where the colloquial meaning of a word or phrase, or

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<sup>87</sup> See, e.g., *Cheng Kang Shi v. Phillips*, No. 06-CV-2093 (NG), 2007 U.S. Dist. LEXIS 97942, at \*59 n.27 (E.D.N.Y. July 12, 2007) (noting that petitioner relied on Wikipedia printouts); *Rodriguez v. It's Just Lunch Int'l*, No. 07 Civ. 9227 (SHS) (KNF), 2009 U.S. Dist. LEXIS 12589, at \*9 (S.D.N.Y. Feb. 17, 2009) (noting the use of a Wikipedia page as an exhibit in support of motion); *Mei v. City of New York*, 06 Civ. 00296 (CM), 2006 U.S. Dist. LEXIS 75871, at \*27 (S.D.N.Y. Oct. 5, 2006) (noting that plaintiff's brief cited to Wikipedia).

<sup>88</sup> See, e.g., *Sloan v. Truong*, 573 F. Supp. 2d 823, 826 (S.D.N.Y. 2008) (noting allegations of sexual misbehavior posted on the Wikipedia Encyclopedia).

<sup>89</sup> See, e.g., *Atl. Recording Corp. v. BCD Music Group, Inc.*, No. 08 Civ. 5201 (WHP), 2009 U.S. Dist. LEXIS 45815, at \*8 (S.D.N.Y. May 7, 2009) (involving Wikipedia in narrative concerning search engine results); *Valtchev v. City of New York*, No. 06 Civ. 7157 (NRB), 2009 U.S. Dist. LEXIS 79815, at \*23–24 (S.D.N.Y. Aug. 31, 2009) (discussing teacher who was belittled for using Wikipedia in lesson plan).

<sup>90</sup> Because of the large number of cases that cite Wikipedia, we focused on the Tenth and Second Circuits, examining every case from the circuit and district courts there. We did this to limit ourselves to a manageable number of cases and to ensure some geographic diversity among the courts we examined.

how a party understood it, is at issue—in essence, the consensus understanding of the crowd—Wikipedia can be a great source.<sup>91</sup> Similarly, legal writers can use Wikipedia to explain what a statement or acronym in a trial transcript means,<sup>92</sup> define a party's likely meaning of common industry words used in an email,<sup>93</sup> or show what a defendant was offering to do.<sup>94</sup> Finding the meaning of terms in contracts,<sup>95</sup> what “the average consumer would believe” a term meant, or general understanding of a word as it relates to trademarkability<sup>96</sup> are also appropriate uses.<sup>97</sup> Attorneys should be more inclined to use Wikipedia when typical sources, such as a dictionary, are unhelpful because the common, crowd-consensus understanding is at issue, not the formal meaning of the word.

Even when it would not be a reliable source for the actual holding, Wikipedia can provide very general information that might help readers contextualize the case because the court is not actually relying on the facts or proof of the Wikipedia article. Courts have frequently used Wikipedia to provide basic explanations of terms that are not actually relevant to the

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<sup>91</sup> See, e.g., *1-800 Contacts, Inc. v. Lens.com, Inc.*, No. 2:07-cv-591 DB, 2008 U.S. Dist. LEXIS 43428, at \*2 n.1 (D. Utah June 2, 2008) (using Wikipedia meaning of “affiliate” in e-commerce in conjunction with defendant’s definition); *Laasmar v. Phelps Dodge Corp.*, No. 06-cv-00013-MSK-MJW, 2007 U.S. Dist. LEXIS 40022, at \*12 n.5 (D. Colo. June 1, 2007) (discussing the colloquial meaning of the term “accident” in the automobile context by pointing to the definition of “car accident” set forth in Wikipedia).

<sup>92</sup> See, e.g., *United States v. Yazzen*, 187 F. App’x 800, 802 n.1 (10th Cir. 2006) (“elephant in the room”); *B & E Juices, Inc. v. Energy Brands, Inc.*, No. 3:07CV1321 (MRK) (WIG), 2007 U.S. Dist. LEXIS 79153, at \*15–16 n.2 (D. Conn. Oct. 25, 2007) (defining the acronym “SKU”); *Fancher v. State*, No. 49A02-0901-CR-35, 2009 Ind. App. Unpub. LEXIS 1049, at \*8 n.1 (Ind. Ct. App. Aug. 17, 2009) (defining a term and explaining an error in a transcript using *Urban Dictionary*); *Chrisman v. State*, 288 S.W.3d 812, 819 n.6 (Mo. Ct. App. July 21, 2009) (referencing *Urban Dictionary* in discussion of whether the use of “homage” was intended or whether it was an error by the court reporter).

<sup>93</sup> See, e.g., *PowerDsine, Inc. v. AMI Semiconductor, Inc.*, 591 F. Supp. 2d 673, 678 n.28 (S.D.N.Y. 2008) (“fabs”).

<sup>94</sup> See, e.g., *Royalty Network, Inc. v. Dishant.com, LLC*, 638 F. Supp. 2d 410, 422 n.9 (S.D.N.Y. 2009) (marketing to the NRI community, meaning “non-resident Indian”).

<sup>95</sup> See, e.g., *Zeiler v. Deitsch*, 500 F.3d 157, 162 n.5 (2d Cir. 2007) (“Torah law”).

<sup>96</sup> See *Berman*, *supra* note 77, at 833 (detailing how the USPTO consults Wikipedia and has wiki specific guidelines).

<sup>97</sup> See, e.g., *Aubin v. Residential Funding Co.*, 565 F. Supp. 2d 392, 397 (D. Conn. 2008) (citing both Wikipedia and *Black’s Law Dictionary* to demonstrate how the average consumer would define “business days”).



holding but will help a reader understand the case.<sup>98</sup> It is appropriate to use Wikipedia to provide readers with more information in these circumstances,<sup>99</sup> as long as the court is intellectually honest about the reason it cites Wikipedia.<sup>100</sup> For instance, in a case that arose “out of investment losses in connection with Bernard Madoff’s Ponzi scheme,” the court offered a link to Wikipedia for readers unfamiliar with the scandal.<sup>101</sup> This Wikipedia article could be unreliable because of the controversial and personal nature of the event and thus, those who edit the article are more likely to have an agenda. Even though the article would be an inappropriate source for a court to rely on, it may be helpful for readers unaware of the scandal to gain at least some understanding of the background and context.

Acceptable usage extends past determining a consensus position, providing general information, or referencing easily verifiable Wikipedia articles; Wikipedia articles are also appropriate as secondary support after the citation of a more traditional source.<sup>102</sup> Frequently, though, Wikipedia articles appear inappropriately in ways central to the holding.

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<sup>98</sup> See, e.g., *Carbert Music, Inc. v. Great*, No. 05 Civ. 9945 (GEL), 2007 U.S. Dist. LEXIS 9098, at \*1 n.1 (S.D.N.Y. Feb. 7, 2007) (citing Wikipedia to explain what BMI does as a performance rights organization); *Quilled Creations, LLC v. Scrapcuts, LLC*, No. 04-CV-6385-CJS, 2005 U.S. Dist. LEXIS 20846, at \*1 n.1 (W.D.N.Y. Sept. 2, 2005) (citing Wikipedia to explain what the “quilling” business is). Wikipedia is also appropriate to help explain random digressions, to the extent that such digressions are appropriate at all. See *Richmond v. Wampanoag Tribal Court Cases*, 431 F. Supp. 2d 1159, 1182 n.40 (D. Utah 2006) (citing Wikipedia in discussion of the phrase “magical thinking”).

<sup>99</sup> See *Thomas v. Sifers*, 535 F. Supp. 2d 1200, 1202 n.3 (D. Kan. 2007) (“See Wikipedia, [http://en.wikipedia.org/wiki/Gastric\\_dumping\\_syndrome](http://en.wikipedia.org/wiki/Gastric_dumping_syndrome). The court wishes to specifically note that it is not endorsing the use of Wikipedia as a reliable source for citation, but the general nature of gastric dumping syndrome appears to be fairly generally accepted and provides context to understanding the parties’ dispute here.”).

<sup>100</sup> See *In re Omeprazole Patent Litig.*, 490 F. Supp. 2d 381, 421 n.11 (S.D.N.Y. 2007) (directing readers to Wikipedia for more information on alkaline metals while relying on expert testimony for actual holding).

<sup>101</sup> *Ret. Program for Employees v. NEPC, LLC*, 642 F. Supp. 2d 92, 93 n.1 (D. Conn. 2009) (offering *The New York Times* as “a more traditional source” in addition to Wikipedia).

<sup>102</sup> *EMI Entm’t World, Inc. v. Priddis Music, Inc.*, 505 F. Supp. 2d 1217, 1219 n.1 (D. Utah 2007) (providing a link to a Wikipedia page after citing the dictionary to define karaoke).

*B. Bad*

Wikipedia is an inappropriate source when there are insufficient numbers of reader-editors with the capability to submit or modify information<sup>103</sup> on a subject or when the reader-editors are likely inflamed about the subject. If the common understanding of a topic might be wrong or if offered for a purpose other than the common meaning of a phrase, the wisdom of the crowd might be unreliable. Wikipedia reflects the consensus wisdom of all its editors.<sup>104</sup> This means that medical knowledge reflects the “wisdom” of all users, not just doctors, and the details of a corporate entity’s legal status are updated by all who care, not just lawyers who might understand the significance. Thus, as a general rule, Wikipedia is not an appropriate source to rely on for technical information that would only be correct if the editor had specialized knowledge, like the public or private nature of ownership for a housing complex when a finding of state action turns on the determination.<sup>105</sup>

Many examples exist of inappropriate Wikipedia citations for scientific or technical purposes. One court used Wikipedia to explain the Global Assessment of Functioning Scale,<sup>106</sup> including interpreting its scores<sup>107</sup> and defining the psychiatrist-specific term “decompensate.”<sup>108</sup> Others relied on Wikipedia to detail the

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<sup>103</sup> Sufficient reader-editorship should be evaluated on an article-by-article basis. Recently, Wikipedia garnered attention for a slight decline in the number of active reader-editors. See Julia Angwin & Geoffrey A. Fowler, *Volunteers Log Off as Wikipedia Ages*, WALL ST. J., Nov. 27, 2009, at A1. The Wikimedia Foundation maintains that while the number of reader-editors is down from its peak, the number of volunteers remains constant. See Posting of Erik Moeller & Erik Zachte to Wikimedia Foundation (Nov. 26, 2009, 06:09 GMT) <http://blog.wikimedia.org/2009/11/26/wikipedias-volunteer-story/>. While Wikipedia’s reader-editor numbers fluctuate, the important variable for the analysis of the suitability of citing an article is the reader-editorship relevant to that particular article.

<sup>104</sup> See Wikipedia, *Help: About*, <http://en.wikipedia.org/wiki/Help:About> (as of Apr. 14, 2010, 01:35 GMT).

<sup>105</sup> Wikipedia is not an appropriate source for technical knowledge that could only be correct if the editor had specialized knowledge. See, e.g., *Royster v. Williams*, No. 08-CV-1367 (CBA), 2008 U.S. Dist. LEXIS 31781, at \*4 (E.D.N.Y. Apr. 17, 2008). The court inappropriately concluded that the housing cooperative was a “private” cooperative, when a finding of state action turned on the public or private nature of the ownership. *Id.* at \*4 n.1.

<sup>106</sup> See *Montalvo v. Barnhart*, 457 F. Supp. 2d 150, 160 n.5 (W.D.N.Y. 2005).

<sup>107</sup> See *id.* at 162 n.6.

<sup>108</sup> See *id.* at 170.

hardware structures of the Internet<sup>109</sup> and the ingredients in chewing gum.<sup>110</sup> Indeed, Wikipedia's first ever citation fits into this category<sup>111</sup>: The Michigan Supreme Court used the website as a reference for "positional asphyxia."<sup>112</sup>

One of the most frequent inappropriate users of Wikipedia was a federal magistrate judge in Connecticut.<sup>113</sup> Over the course of several opinions, he turned to Wikipedia to define the symptoms of Hepatitis C,<sup>114</sup> alanine transaminase,<sup>115</sup> the symptoms of fibromyalgia,<sup>116</sup> fentanyl,<sup>117</sup> systemic lupus erythematosus,<sup>118</sup> the Lasegue Test,<sup>119</sup> radiculopathy,<sup>120</sup> tibialis anterior,<sup>121</sup> gastrocnemius muscle,<sup>122</sup> and xyphoid.<sup>123</sup> These definitions may be entirely accurate, but because of the risk of inaccuracy for such technical terms—and a public awareness of this risk—we suggest it is inappropriate to rely on Wikipedia in these cases.

Where passions are inflamed, such as the Bernie Madoff investment scandal, legal writers should also steer away from Wikipedia. Articles on individual persons may be particularly likely to experience these kinds of passions, such as the article on commentator Ann Coulter that listed her as a former clerk for Judge Richard Posner, perhaps to boost her credibility or imply that Judge Posner and Coulter share similar political views.<sup>124</sup> It

<sup>109</sup> See *Applied Interact, LLC v. Vt. Teddy Bear Co.*, No. 04 Civ. 8713, 2005 U.S. Dist. LEXIS 19070, at \*36–37 (S.D.N.Y. Sept. 6, 2005).

<sup>110</sup> *Topps Co. v. Cadbury Stani S.A.I.C.*, 454 F. Supp. 2d 89, 90 nn.1–2 (S.D.N.Y. 2006).

<sup>111</sup> See *Bryant v. Oakpointe Villa Nursing Ctr., Inc.*, 684 N.W.2d 864, 867 n.2 (Mich. 2004).

<sup>112</sup> *Id.*

<sup>113</sup> See *infra* notes 114–23.

<sup>114</sup> See *Roth v. Astrue*, No. 3:08cv00436 (SRU) (WIG), 2008 U.S. Dist. LEXIS 108965, at \*11 n.6 (D. Conn. Nov. 14, 2008).

<sup>115</sup> See *id.* at \*12 n.7.

<sup>116</sup> See *id.* at \*20 n.14.

<sup>117</sup> See *id.* at \*20–21 n.17.

<sup>118</sup> See *Montanez v. Astrue*, No. 3:07cv1039 (MRK) (WIG), 2008 U.S. Dist. LEXIS 63551, at \*13 n.3 (D. Conn. Aug. 1, 2008).

<sup>119</sup> See *Jefferson v. Astrue*, No. 3:06cv1729 (MRK) (WIG), 2008 U.S. Dist. LEXIS 26020, at \*4 n.2 (D. Conn. Mar. 11, 2008).

<sup>120</sup> See *id.* at \*7 n.7.

<sup>121</sup> See *id.* at \*9 n.9.

<sup>122</sup> See *id.* at \*9 n.10.

<sup>123</sup> *Wright v. Barnhart*, No. 3:05CV1487 (SRU) (WIG), 2006 U.S. Dist. LEXIS 97239, at \*14 n.6 (D. Conn. Dec. 14, 2006).

<sup>124</sup> See *Cohen*, *supra* note 11.

is unsurprising that all of the incidents on MSNBC's list of the fifteen biggest Wikipedia blunders involve living persons.<sup>125</sup> There are many instances, though, where the line between appropriate and inappropriate usage is less clear.

### C. *Gray Areas*

Wikipedia appears more trustworthy when the common wisdom is likely to generate accurate content—that is, in nontechnical and uncontroversial areas—and when subsequent reader-editors are more likely to comprehend the information to the extent that they can improve the article and correct errors. Thus, the more basic the topic and the more readily verifiable to later-in-time reader-editors, the more likely it is that Wikipedia will be an appropriate source.

Wikipedia may be used for extremely basic geographical information, for example, the location of a city within a county.<sup>126</sup> It is more appropriate to use Wikipedia for geography and rough population information on cities in New York<sup>127</sup> than for details on foreign cities, or at least those in more obscure countries, such as Mauritania.<sup>128</sup> Wikipedia's English language website is likely to have more editors who will understand, and know how to verify, information on New York. In some cases, the greater number of potential editors increases the perceived reliability of an article. Users are more likely to recognize the flags or seals of various large cities,<sup>129</sup> or the date or occurrence of a well-known recent event such as Hurricane Katrina,<sup>130</sup> than to understand the latest medical literature. We advise legal writers to use

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<sup>125</sup> See JR Raphael, *15 Biggest Wikipedia Blunders*, Sept. 21, 2009, <http://www.msnbc.msn.com/id/32588168>. Wikipedia has taken significant steps to prevent these problems from reoccurring. *See id.*

<sup>126</sup> *See, e.g.*, *Reuland v. Hynes*, 460 F.3d 409, 423 n.1 (2d Cir. 2006) (Winter, J. dissenting) (using Wikipedia to find the land area of certain towns forming the basis of a calculation); *Stoltz v. Macurdy*, No. 08-cv-01547-REB-MEH, 2009 U.S. Dist. LEXIS 39321, at \*1 n.2 (D. Colo. Apr. 27, 2009).

<sup>127</sup> *See, e.g.*, *Cotz v. Mastroeni*, 476 F. Supp. 2d 332, 336 n.1 (S.D.N.Y. 2007).

<sup>128</sup> *See, e.g.*, *Tandia v. Gonzales*, 236 F. App'x 455, 457 n.4 (10th Cir. 2007) (discussing Kaedi, the administrative center of the Gorgol region of Southern Mauritania).

<sup>129</sup> *See Weinbaum v. City of Las Cruces*, 541 F.3d 1017, 1034 n.18 (10th Cir. 2008).

<sup>130</sup> *See Rochester Gas & Elec. Corp. v. Delta Star, Inc.*, No. 06-CV-6155-CJS-MWP, 2009 U.S. Dist. LEXIS 11489, at \*5 n.2 (W.D.N.Y. 2009).

common sense in assessing whether the topic is sufficiently broad enough to generate sufficient reader-editors to render the entry reliable.

We do not pretend that the determination between very basic information and technical information is always an easy one. A list of file extensions on computers—.xls, .doc, etc.<sup>131</sup>—seems like basic information to the computer literate, yet delving much further into computer-related jargon might quickly cross into “technical” terminology.<sup>132</sup> Further, it is difficult to assess the propriety of things on the margin.<sup>133</sup> Even when detailed information, such as population figures, appears accurate, conclusions drawn from it might not be.

One court turned to Wikipedia to explain that “The Suffolk County Police Department ‘has a strength of around 2,500 sworn officers, making it one of the largest police agencies in the country.’”<sup>134</sup> It might be appropriate to rely on Wikipedia for the approximate number of officers, but relying on that same article to determine whether it is one of the largest in the country may be less reliable because of user bias towards self-promotion.

Finally, courts should consider the available alternatives. Even if the accuracy of Wikipedia is not in question, courts should ask whether a traditional dictionary entry or newspaper article is available that would provide the same information with greater confidence to some readers.<sup>135</sup> Readers may be more accepting of the *CIA World Fact Book* for information on the political status of Vanuatu than Wikipedia’s article on the same topic.<sup>136</sup> But if there is a lack of reasonably available sources in the English language covering Indonesian naming conventions,<sup>137</sup>

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<sup>131</sup> See *United States v. Welch*, 291 F. App’x 193, 203–04 (10th Cir. 2008).

<sup>132</sup> See *Phillip M. Adams & Assocs. v. Dell, Inc.*, 621 F. Supp. 2d 1173, 1179 n.42 (D. Utah 2009) (citing to Wikipedia to discuss the meaning of “source code”).

<sup>133</sup> See *VDP Patent, LLC v. Welch Allyn Holdings, Inc.*, 623 F. Supp. 2d 414, 427–28 (S.D.N.Y. 2008) (comparing the meaning of “cross-section” in geometry with common meaning of “cross-section”).

<sup>134</sup> *Rubio v. Cnty. of Suffolk*, No. 01-CV-1806, 2007 U.S. Dist. LEXIS 75344, at \*14 n.4 (E.D.N.Y. Oct. 9, 2007).

<sup>135</sup> “[W]hether or not Wikipedia is more reliable than the typical newspaper article, many readers . . . will assume that it’s less reliable; citing to it may thus decrease your credibility.” EUGENE VOLOKH, *ACADEMIC LEGAL WRITING* 143–44 (3d ed. 2007).

<sup>136</sup> The authors note that the *CIA World Fact Book* appears after Wikipedia in the search results for a Google search on “vanuatu.”

<sup>137</sup> See *FNU v. Mukasey*, 274 F. App’x 662, 663 n.1 (10th Cir. 2008).

Wikipedia might have to do. Legal writers should not use Wikipedia as a mere shortcut in the tough cases, but instead where the ease of access, breadth of content, and quick updates makes it the best available source. Sometimes the best available source may be an entirely different consensus-driven website, but the principles we advocate apply to those websites as well.

*D. Applying These Principles Outside of Wikipedia: Urban Dictionary*

The common sense principles we advocate—considering both the source and its use—apply to other existing consensus websites and will apply in the future as the Internet continues to provide access to user-generated reference-content, which may prove useful to the courts. History has shown that courts do not always seek or require a scientific definition or official source.<sup>138</sup> In these situations, some have turned to Urban Dictionary. Judge Karen Nelson Moore of the Sixth Circuit explained her use of the often vulgar<sup>139</sup> website:

Understanding Gordon's statements in the 911 tape requires an understanding of slang, which is constantly evolving. Turning to a source that operates by consensus, and thus develops along with slang usage, therefore seems unusually appropriate in this instance. UrbanDictionary.com is such a source, as it permits users to propose definitions for slang terms, and other users to vote on whether they agree with the particular definitions posited.<sup>140</sup>

While not perfect, Urban Dictionary may be one of the most reliable and easily available sources for slang definitions.<sup>141</sup> By its very nature, slang is hard to define and constantly evolving. Urban Dictionary's popularity, size, and speed of adding and promoting new entries through the consensus system make it a

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<sup>138</sup> See, e.g., *Boone v. Jackson*, No. 03 CV 8661 (GBD), 2005 U.S. Dist. LEXIS 13172, at \*13 (S.D.N.Y. June 30, 2005) ("The appearance of the phrase 'holla back' in the Urban Dictionary further supports defendant's contention that the phrase is common and therefore unprotectable.").

<sup>139</sup> Urban Dictionary admits that its "content is frequently presented in a coarse and direct manner that some may find offensive." Urban Dictionary, *Terms of Service*, <http://www.urbandictionary.com/tos.php> (last visited Apr. 15, 2010).

<sup>140</sup> *United States v. Arnold*, 486 F.3d 177, 210 n.8 (6th Cir. 2007) (en banc) (Moore, J., dissenting).

<sup>141</sup> At the very least, utilizing Urban Dictionary is certainly easier for the courts than polling the facebook-generation or hitting the streets and mulling over all the possible meanings of "it's complicated."

great source. Courts have turned to this source when perception matters. In one case, the parties disputed whether “balls to the wall” was a sexually-charged phrase.<sup>142</sup> The court recognized that the actual origin of the phrase had to do with jet pilots moving a throttle topped with a “ball,” but the perception of the phrase—the issue before the court—as reflected in Urban Dictionary, included a sexual component.<sup>143</sup> Similarly, collaborative slang-oriented websites such as Urban Dictionary may be the best source to ascertain whether “OG,” short for Original Gangster, suggests a person is old,<sup>144</sup> “baby mama” is understood to have a racial component,<sup>145</sup> or “hooked up,” in the right context, can be defamatory.<sup>146</sup> Because Urban Dictionary defines itself as “the [slang] dictionary you wrote”<sup>147</sup> without any pretense of seriousness, courts and attorneys may understand more easily the natural limits of the website and avoid abusing it as a source.

Like Wikipedia, though, Urban Dictionary can be used inappropriately. Even where meaning is at issue, Urban Dictionary is an unsuitable source when not used to define common slang. For example, one court used Urban Dictionary to define a police term.<sup>148</sup> Urban Dictionary should be relied on to define the popular or common meaning of slang terms, not industry or technical terms that will not benefit from a group up or down consensus voting system. Prior to using an Urban Dictionary entry, courts should also examine the number of votes

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<sup>142</sup> See *Sanchez v. Sungard Availability Servs. LP*, No. 06-3660 (DRD), 2009 U.S. Dist. LEXIS 38023, at \*7–8 n.2 (D.N.J. May 5, 2009).

<sup>143</sup> See *id.*

<sup>144</sup> See *EEOC v. Republic Servs., Inc.*, 640 F.Supp.2d 1267, 1297–98 (D. Nev. 2009).

<sup>145</sup> See *State v. Harris*, No. 2008AP810-CR, 2009 WL 129878, at \*3–4 n.5 (Wis. Ct. App. Jan. 21, 2009) (finding that “baby mama” has a connotation directed at African Americans).

<sup>146</sup> *Benz v. Wash. Newspaper Publ'g Co.*, No. 05-1760 (EGS), 2006 U.S. Dist. LEXIS 71827, at \*14–15 n.10 (D.D.C. Sept. 29, 2006).

<sup>147</sup> Urban Dictionary, <http://www.urbandictionary.com> (last visited Apr. 15, 2010).

<sup>148</sup> See *Cyrus v. Town of Mukwonago*, No. 07-C-1035, 2009 U.S. Dist. LEXIS 34859, at \*8 n.4 (E.D. Wis. Apr. 24, 2009) (defining “10-96” as a police term referring to emotionally disturbed persons); see also *People v. Mendez*, No. C057883, 2008 Cal. App. Unpub. LEXIS 6149, at \*4 n.1 (Cal. Ct. App. 2008) (defining “Sur 13” as a gang affiliated with the Mexican mafia); *State v. Ward*, 649 S.E.2d 145, 148 (S.C. Ct. App. 2007) (reasoning that holding a gun “gangster style” was an indication of being in a gang).

for that entry,<sup>149</sup> simply to ensure that it is not a single person's vanity entry that fails to reflect at least some consensus.<sup>150</sup> As with Wikipedia, one should consider alternative sources. With the exception of slang, courts should use sources other than Urban Dictionary with greater reliability or at least the perception thereof. Common sense may be easier to apply with Urban Dictionary because its often vulgar entries would give most legal writers pause, but understanding when to use Urban Dictionary will make writers more effective.

## V. CONCLUSION

Understanding when and how to cite Wikipedia is important because misuse can undermine confidence in the author. Attorneys know that losing credibility with judges and clerks makes advocating on behalf of their clients difficult to impossible. Judges realize that persuasion is partly a basis of their power. And academics value their reputation, which suffers from publishing unpersuasive and shoddy work. If the legal profession worries too much about these perceptions, it might avoid using Wikipedia altogether or fail to acknowledge it when it does. But Wikipedia is a great source: its scope of coverage is unparalleled; its articles are easy to find and helpful to users; and used correctly, it can help legal professionals avoid wasting time looking for the perfect source.

A broader understanding of when it is appropriate to cite Wikipedia will build the necessary confidence for parties and courts to cite—and be honest about their usage of—consensus websites. Doing it right—citing the right consensus website for

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<sup>149</sup> Judge Sutton noted that “the definition cited above . . . received 272 positive votes, and only 45 negative votes, making it the most popular of the twenty proposed definitions of ‘finna,’ all but one of which connote future action.” *United States v. Arnold*, 486 F.3d 177, 210 n.8 (6th Cir. 2007).

<sup>150</sup> Professor Volokh expresses concern that one single person could suggest a definition that was not accepted, even as slang, by anybody. Posting of Eugene Volokh to The Volokh Conspiracy, <http://www.volokh.com/posts/1247158381.shtml> (July 9, 2009, 12:53 EST). The votes, however, found on an article show both its relative popularity to other definitions for the same word and whether anybody has come along and supported this definition. One will also find looking at other entries for the same word helpful. It is possible that a definition may receive votes because it is amusing, and some entries include multiple definitions for the same word. A quick look at the other definitions on the same page will capture the broader meaning of the slang—that is, whether “hoe” says something about promiscuous women—which is what one is usually looking for with slang.



the right reasons with the right format—will minimize criticisms and help build a better legal profession. If legal professionals fail to adopt and follow common sense standards for websites like Wikipedia, controversy caused by inappropriate usage will eventually cause attorneys to shun the encyclopedia and deny the profession a valuable resource.