

Conducting Legal Research Without LexisNexis or Westlaw

Toni Boone, Administrative Law Judge (retired)

I. Query:

Imagine performing your job as a hearing officer without the guidance of:

- Statutes
- Rules/regulations
- Case law

Would the absence of laws make your job easier or more difficult?

II. Hierarchy of Laws

A. Federal and State Constitutions

Just as Congress is authorized to make federal laws by the U.S. Constitution, state legislatures are authorized to make state laws by each state's constitution. Legislation is presumed to be in accordance with U.S. and state constitutions.

B. Statutes

Primary laws created by a legislative body.

C. Regulations or Administrative Code

Rules required by administrative agencies based on and flowing from statutes.

D. Case Law

Reported decisions of appellate courts which make interpretations of the law and can be cited as precedents. A court's interpretation of how the law should be applied to the facts of a particular case that is published in a "reporter."

E. Administrative Reports, Policy and Procedures Manual, etc.

Policy decisions issued by administrative agency applicable only to that agency.

III. Legal Precedent Defined

A. A previously adjudicated decision of a court furnishing an example or authority respecting a similar or identical question of law that arises in a subsequent case;

B. A prior case close in facts or legal principles to the case under consideration;

C. A principle established in a prior case that a court uses as a basis to decide later cases involving similar facts and issues.

IV. The Basis for the Authority of a Precedent: The Doctrine of *Stare Decisis*

The United States Court of Appeals for the Third Circuit has stated:¹

“A judicial precedent attaches a specific legal consequence to a detailed set of facts in an adjudged case or judicial decision, which is then considered as furnishing the rule for the determination of a subsequent case involving identical or similar material facts and arising in the same court or a lower court in the judicial hierarchy.”

A. Doctrine of *Stare Decisis* (Anglo-Latin pronunciation: /'stɛəri di'saɪsɪs/)

A legal principle by which judges are obliged to respect the precedents established by prior decisions. The words originate from the phrasing of the principle in the Latin maxim *Stare decisis et non quieta movere*: "to stand by decisions and not disturb the undisturbed." In a legal context, this is understood to mean that courts should generally abide by precedents and not disturb settled matters.

B. Verticality of *Stare Decisis*

Generally speaking, in the state and federal court systems there are trial courts, intermediate courts of appeal and a supreme court. The trial courts (limited jurisdiction courts or general jurisdiction courts)² exercise an inferior jurisdiction and are referred to as inferior courts. They are required to accept the law (obey the precedents) established by courts of superior jurisdiction (intermediate courts of appeal and supreme courts). An inferior court cannot overrule the decision of a higher court and should not attempt to do so.

C. Horizontality of *Stare Decisis*

Horizontal *stare decisis* is the idea that a judge is bound by decisions of earlier judges at the same, similar or coordinating level (*e.g.* each panel of judges on the federal court of appeals for a circuit is bound to obey the prior appellate decisions of the same circuit. Precedents of a U.S. court of appeals only may be overruled only by the court *en banc* (a session of all – or at least a majority of -- the active appellate judges of the circuit) or by the U.S. Supreme Court.³

¹ *Allegheny Gen. Hosp. v. NLRB*, 608 F.2d 965, 969-70 (3rd Cir. 1979)

² Limited jurisdiction courts are commonly called justice, township or municipal courts. General jurisdiction courts are commonly called district, circuit or superior courts.

³ *United States v. Lucas*, 963 F.2d 243, 247 (9th Cir. 1992).

D. Interaction of State and Federal Courts and *Stare Decisis*

Stare decisis can interact in a counterintuitive way. State court systems are not considered inferior to the federal court system—they are parallel court systems. While state courts must follow the U.S. Supreme Court on issues of federal law, federal courts must follow decisions of the courts of each state on issues of that state's law. If there is no decision on point from the highest court of a state, the federal court must attempt to predict how the state court would resolve the issue, by looking at decisions from state appellate courts. Decisions of the lower federal courts (*i.e.* federal circuit courts and district courts) are not binding on any state courts. Consequently, interpretations of certain federal statutes sometimes differ depending upon whether the forum is state or federal. In practice, however, judges in one system will almost always choose to follow relevant case law in the other system to prevent varying results.

V. What State Courts Can Establish Precedent?

- A. State Supreme Court
- B. State Court of Appeals
- C. In some states, Circuit Courts which sit as a three-judge panel.
- D. The first level of judicial review is typically to a single judge of the general jurisdiction (trial) court in the county. Opinions they render ordinarily do NOT establish precedent.

VI. Understanding the Impact of Precedent

- A. Binding Precedent (also known as “binding authority” or “mandatory authority”)

Under the doctrine of *stare decisis*, a lower court must honor findings of law made by a higher court that is within the appeals path of cases the court hears. By definition, decisions of lower courts are not binding on courts higher in the system, nor are appeals court decisions binding on local courts that fall under a different appeals court. Thus, a decision made by a superior court cannot be changed by an inferior court nor can inferior courts evade binding precedent of superior courts, but a court may depart from its own prior decisions. Occasionally, a judge will assert personal disagreement with the judgment he or she was required to render because of binding precedent.

B. Persuasive Precedent

Persuasive precedent The rulings of lower courts, higher courts from other geographic jurisdictions, cases decided in other parallel systems (for example, military courts, administrative courts, indigenous/tribal courts, state courts versus federal courts in the United States), and the courts of other nations are not binding and have no value as precedent. Appellate courts must follow their own proclamations of law made earlier on other cases and honor rulings made by higher appellate courts in their state/jurisdiction. However, in cases of first impression,⁴ a court may consider the reasoning of courts of other jurisdictions that have dealt with the same or similar issues, for their persuasive value.

C. On Point

A court is "bound" to follow the precedent of a governing jurisdiction only if the case in question is "on point," which means:

1. The question resolved in the precedent case is the same question as the pending case;
2. Resolution of that question was necessary to the disposition of the precedent case;
3. The significant facts of the precedent case are also presented in the pending case; and
4. No significant additional facts appear in the pending case that would distinguish it.

D. Analogous

A prior case which is not "on point," because of differences between it and the pending case, may still be useful if it is analogous—if it bears enough similarity that an analogy can be drawn from it.

E. Distinguishable

Cases that contain an essential difference from a particular case are said to be "distinguishable." To "distinguish" a case is to show that a prior case, which was cited as applicable to a pending case, is actually inapplicable due to an essential difference between the two cases.

⁴ A case of first impression one in which a question of law is presented which has never arisen before in that jurisdiction. If it is only a case of first impression in that particular jurisdiction, the decisions of other state or federal courts may be followed, because their reasoning is persuasive.

F. Holding

A court's determination of a matter of law pivotal to its decision; a legal principle drawn from a court decision. *Stare decisis* applies to the holding of a case, rather than to *obiter dicta* ("things said by the way"). The U.S. Supreme Court put it this way: "dicta may be followed if sufficiently persuasive but are not binding."

G. *Dictum* (plural *dicta*)

An observation expressed by a judge or a court that does not contribute to the final holding in the case and which is not binding. The dicta of a case have no precedential force. Only the holding is binding in subsequent cases. *Dicta*, however, can still be useful:

"As a dictum is by definition no part of the doctrine of the decision, and as the citing of it as a part of the doctrine is almost certain to bring upon a brief maker adverse comment, lawyers are accustomed to speak of a dictum rather slightly, and sometimes they go so far as to intimate a belief that the pronouncing of a dictum is the doing of a wrong. Yet it must not be forgotten that dicta are frequently, and indeed usually, correct, and that to give an occasional illustration, or to say that the doctrine of the case would not apply to some case of an hypothetical nature, or to trace the history of a doctrine, even though it be conceded, as it must, that such passages are not essential to the deciding of the very case, is often extremely useful to the profession."

William M. Lile et al., *Brief Making and the Use of Law Books* 307 (3d ed. 1914).

VII. The Value of the Doctrine of Precedent

A. Consistency

If two cases are the same, in all relevant respects, they should be treated in the same way. To treat the later case differently than the first case would be to fail to treat the parties before the courts equally. Consistency promotes equality of treatment.

B. Expectations

If an institution, such as the court system, has dealt with an issue in one particular way in the past, it creates the expectation that it will deal with the same issue in the same way in the future. This enables the individual to plan his/her life, with respect to the issue, with some assurance because there is control over that situation or set of circumstances.

C. Replicability

Decisions are more predictable if they are not made *de novo* each time. The doctrine of precedent makes it likely that institutional decisions can be replicated or reproduced. It enables a judge to make a fair and informed decision, based on relevant case law, even though it is the first case the judge has heard on a particular issue.

D. Law-Making

Statutes and regulations are sometimes incomplete and/or in need of greater specificity or explanation. Some statutes and/or regulations can be interpreted in more than one way. The doctrine of precedent allows the courts to make law to provide clarification of existing statutes and regulations.

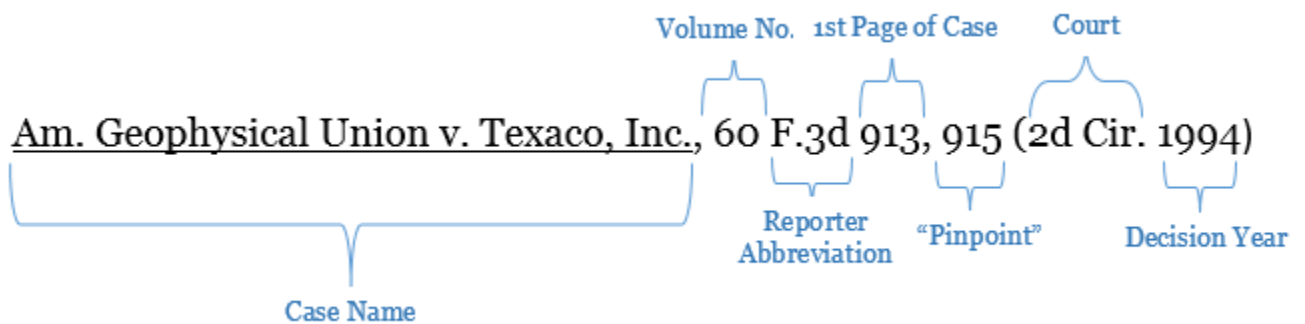
VIII. Reading and Understanding Citations

A. Citation of Authority Defined

The reading, production of or reference to legal authorities and precedents, such as constitutions, statutes, reported cases, and treatises, in arguments to courts, in legal textbooks, law review articles, briefs, motions, etc., to support, reinforce or bolster contentions advanced by the party who provided the citation.

B. Citation

At the top of each page of a published opinion is the name of the particular reporter in which the opinion is published, preceded by the volume number. The reporter name is followed by the page number at which the opinion can be found in that reporter. The volume, reporter name, and page number constitute the citation, which is used to locate the opinion or to refer to it. Citations are typically abbreviated—"100 Cal. Rptr. 600" indicates the opinion appears in volume 100 of the California Reporter at page 600.



When the same case is printed in different books, citations to more than one book may be given. Additional citations are known as parallel citations: 265 U.S. 274, 68 L. Ed. 1016, 44 S. Ct. 565. This means that the case you would find at page 565 of volume 44 of the *Supreme Court Reporter* will be the same case you find on page 1016 of volume 68 of *Lawyers' Edition* and both will be the same as the opinion you find in the official government version, *United States Reports*. The text of the opinion will be identical but the editorial materials added by the publishers (West and Lexis Nexis) will be different.

C. Report or Reporter

Published decisions from a court or group of courts, such as:

1. U.S. Supreme Court reports are abbreviated "U.S." and "S.Ct." and "L.Ed."
2. Federal Court Reports are numbered abbreviations: "F.2d," "F.3d," etc.
3. Federal Supplement report is abbreviated "F.Supp."
4. Regional reports are abbreviated by region and numbered: S.W.2d, S.E.2d., N.E.2d, N.W.3d, P.2d, A.2d, etc.
5. State reports are abbreviated Neb., Tex., Or., Fla., etc.

D. Reading a Citation: 959 S.W.2d 748, 751

1. 959 is the volume number of the report or reporter
2. S.W.2d. is the name of the reporter, in this case a regional reporter
3. 748 is the page number where the opinion begins in that volume
4. 751 is the specific location of the portion of the case that *may be* applicable

E. Unpublished Opinions

Judicial decisions or opinions that have not been published in any official case reporter. Opinions which are not published are only binding on the parties to that case; they ordinarily are not regarded as precedents. The precedential value of unreported/unpublished opinions – if any -- is established by the court rules for each state. Unpublished opinions from other jurisdictions typically have no precedential value.

IX. Reading an Appellate Opinion

A. Title, Case Caption or Style

At the top of the first page of the opinion is the title of the action identifying the parties and their roles in the action. In civil cases, the party who appealed the lower court's decision is identified as appellant and the party defending the lower court's decision is identified as respondent. In a criminal case where the government is prosecuting, the plaintiff is the state or federal government. The docket or calendar number follows the identification of the parties, followed by the name of the court and the date of the decision. The heading or introductory section of the opinion is also called the case caption or style.

B. Statement of the Case

A short (usually one paragraph) summary of the case, which includes: the case type (civil, criminal, etc.), jurisdiction of/for the case, a brief (single sentence) summary of the question before the court, the lower court's decision on that question, and the appellate court's response to the lower court's disposition (reverse, remand, affirm, etc.)⁵

C. Parties

Identification of all parties to the action, their attorneys and the law firms at which the attorneys are employed.

D. Pertinent Facts (titled "Background" in some opinions)

A section explaining the procedural history of the case—the venue in which the case was originally heard, the facts in dispute, the original findings. It is at this point that the court first briefly notes the facts and issues involved in the case.

E. Standard of Review

A citation to statutes, rules or case law authorizing appellate review, often accompanied by an explanation of the basis for review.

F. Contentions

A detailed explanation of the contentions of the parties and the facts in dispute.

⁵ After this identifying information, some reporters classify the points of law applied by the court into individual paragraphs, called headnotes, to help the reader identify and analyze the legal concepts discussed in the opinion. The summary and headnotes are written by the publisher of the reporter for the convenience of the reader. They are not part of the court's opinion and should not be treated as such.

G. Legal Analysis

It is in this section that the court delineates the applicable law (statutes, Administrative Procedures Act, regulations, case law, *etc.*) and explains how they relate to the facts of the case.

H. Conclusions and Rationale

The decision reached by the court resolving the issues before the court and explaining the court's reasoning, which can be worded either broadly or narrowly, depending on the facts of the case.

I. Disposition

The official decision of the court on the rights and claims of the parties which resolves the controversy between them. A judgment may be completely in favor of one party, or partly in favor of one and partly in favor of another. It may be a straightforward affirmance or reversal of a lower court's decision, or it may affirm on some questions, reverse on others, and remand on still others.

X. Free On-Line Legal Research Databases

Fortunately, there is an abundance of free case law available online. These sources typically offer the full text of court opinions free of charge. These sites are best used to access relatively recent decisions when the case name, title, or date of the case is known. They utilize browsing and keyword searching as the principal means of finding cases relevant to the search, which are not always the best methods to find cases.

Databases below have been ranked by their success in providing the searched for cases:

Google

<https://www.google.com/>

For me, the simplest is still the best. It is amazing how many cases I've found simply by entering as much information as I had available in the search box.

Cornell University Legal Information Institute (LII)

<https://www.law.cornell.edu/>

Among the best, if not *the* best, of the free legal databases is Cornell's LII. It's the best because it's so user-friendly. By clicking on the "Get The Law" tab at the top left of the page, you can select Constitution, Supreme Court, U.S. Code, or Code of Federal Regulations. They have Supreme Court decisions going back 60 years, which is more than the Supreme Court's official website. In addition, they also offer State Law. Simply click the "Get The Law" tab, then select, "Law By Jurisdiction" and click on "State

Law.” Whether you are searching federal or state law, simply enter your citation or key word in the “Search” box in the upper right hand corner.

Google Scholar

<http://scholar.google.com/>

Google Scholar provides the full text of selected district court opinions, U.S. Court of Appeals opinions from the 1920s on, and *all* U.S. Supreme Court opinions. In addition, it provides cases from all 50 states from 1950 to the present. It has an advanced search option which allows you to search a specific state.

When you access the webpage, you’ll find the familiar Google search box, but with two important variations. Underneath the box you should select the “Case Law” button. Once you click the “Case Law” button, you’ll have the opportunity to select from “Federal Law,” your own “State Courts,” or “Select Court.” At that point, you can enter information in the search box or can go to the inverted triangle on the right side of the search box. Clicking on the triangle will allow you to conduct an “advanced search,” although sometimes the *non*-advanced search is just as fruitful.

Google Scholar is also a wonderful research for doing all kinds of research in other than the legal field. Just click on the “Article” button, rather than the “Case Law” button and follow the same process.

Justia

<https://www.justia.com/>

Justia includes an extensive, free database of federal and state cases. Simply scroll to mid-screen and find the “Legal Research” area. From there you can select “US Courts” or “US States” to begin the search for the case law you need. It also provides free access to codes, regulations and legal articles.

Findlaw

<http://caselaw.findlaw.com/>

Findlaw is a fairly comprehensive resource from which you can conduct a broad search for cases by type or jurisdiction. It contains a searchable database of Supreme Court decisions dating back to 1893 as well as an archive of published opinion summaries dating back to 2000 by the U.S. Supreme Court, all thirteen U.S. Circuit Courts of Appeals, and some state courts. Within this database, you may search by year, U.S. Reports volume number, citation, case name or text.

Public Library of Law

<http://www.plol.org/Pages/Search.aspx>

This database provides access to a wide range of resources for free including, easy-to-follow links to state and federal cases, statutes, regulations and constitutions. It enables the user to search cases from the U.S. Supreme Court (1791-present), U.S. Court of Appeals (generally 1950-present), and state appellate courts (1997-present).

Casetext

<https://casetext.com/>

Casetext is a free legal research and writing platform that lets researchers search millions of cases, statutes and regulations annotated with analysis contributed by members of the legal community. The Casetext library includes federal published and unpublished cases (Supreme Court, appellate, and district court) since 1925, as well as appellate cases for all 50 states, updated daily to include recently issued opinions.

Dragnet

http://www.nyls.edu/library/library_services/dragnet1/dragnet/

This is actually a just a sophisticated Google custom search developed by some law librarians at New York University Law School. It operates by listing a host of free online legal databases. Clicking on the various links takes you to the site of your choice from which you may search further.

Court Links

<http://www.uscourts.gov/about-federal-courts/federal-courts-public/court-website-links>

All the information you might ever want from a lower federal court can be found here. Prominent on the homepage is a map of the federal court districts. You can scroll down and select from the U.S. Court of Appeals, the U.S. District and Bankruptcy Courts. Once you select the court, you can enter additional information for a database search.

United States Supreme Court

<https://www.supremecourt.gov/opinions/opinions.aspx>

This official site contains Supreme Court decisions beginning with the 2000 term as well as useful information about the Court.

Specifically for State Case Law

Every state in the United States has its own legal database. Some are better than others. All can be accessed through this portal:

National Center for State Courts

<http://www.ncsc.org/Information-and-Resources/Browse-by-State.aspx>

This website provides a line to every state court website in the United States.

Each state's website can easily be googled or accessed through the NCSC website. Here are some of the state websites for this region which you may find useful

Oregon

State of Oregon Law Library Digital Collection

<http://digitallawlibrary.oregon.gov/>

This database provides access to opinions and briefs from the Oregon Court of Appeals and Supreme Court.

Oregon Revised Statutes

https://www.oregonlegislature.gov/bills_laws/Pages/ORS.aspx

The ORS is published every two years; however, the website, at the time of this writing, still has the 2015 Edition posted. Thus, the website did not include laws enacted during the 2016 legislative session.

Oregon Administrative Rules

http://sos.oregon.gov/archives/Pages/oregon_administrative_rules.aspx

California

The Official Case Law of the State of California

<http://www.courts.ca.gov/opinions.htm>

This site is free access to all published opinions from the state of California. Because it is maintained by LexisNexis, it offers several searching options beyond simple keyword searching.

California Constitution, Statutes, and Code of Regulations

http://www.legislature.ca.gov/research_and_publications/laws_and_constitution/laws_and_constitution.html

This site has it all—constitution, statutes, code—and it is updated weekly.

Idaho

<https://www.idcourts.us/repository/start.do>

This databank has case law for the Idaho State Judiciary. Electronic cases are available from 1995 forward. A search with either case name or case number is available.

Idaho Constitution, Statutes and Administrative Rules

<https://legislature.idaho.gov/idstat/TOC/IDStatutesTOC.htm>

This site maintained by the Idaho legislature, provides not only statutes, but links to the Idaho Constitution and all the state's Administrative Rules.

Washington

Washington State Judicial Opinions Website

<https://www.lexisnexis.com/clients/wareports/>

This site, which is free of charge, is maintained, at the state's expense by LexisNexis. It has search options by citation, by party name, by the name of the judge who heard the case and also an "Advanced" search option.

Revised Code of Washington (RCW)

<http://apps.leg.wa.gov/rcw/>

Washington Administrative Code (WAC)

<http://apps.leg.wa.gov/rcw/>

Nevada

Nevada Appellate Cases

<http://caseinfo.nvsupremecourt.us/public/caseSearch.do>

You can do an appellate case search in Nevada, but only if you already have the correct state case number or the exact case caption.

Nevada Statutes

<https://www.leg.state.nv.us/nrs/>

Nevada Administrative Code

<https://www.leg.state.nv.us/NAC/NAC-index.HTML>

Resources

Carole A. Levitt and Mark E. Rosch, *The Cybersleuth's Guide to the Internet: Conducting Effective Investigative & Legal Research on the Web* (Ref. KF242.A1 L478 2014).