



# Legal Research 4

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Citators: Update Cases

When a case moves through time and space, its legal Authority may change.



## Direct/Subsequent History

Miranda's  
right

U.S. Supreme  
Ct.

Indirect History  
Subsequent treatment

Cited by

*Miranda v. Arizona*,  
384 U.S. 436 (1966);

Cited by

*U.S. v. Patane*,  
124 S.Ct. 2620

(2003)

&

More than  
40,000 cases,  
ALR, & law  
review  
Articles, etc.

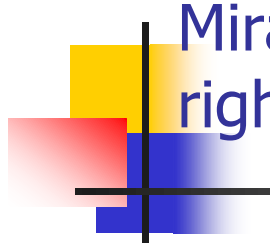
98 Ariz. 11 (1965)

Supreme Ct.  
Of Arizona

*Brown v. Walker*,  
161 U.S. 591 &  
148 cases

Arizona Ct. of Appeals

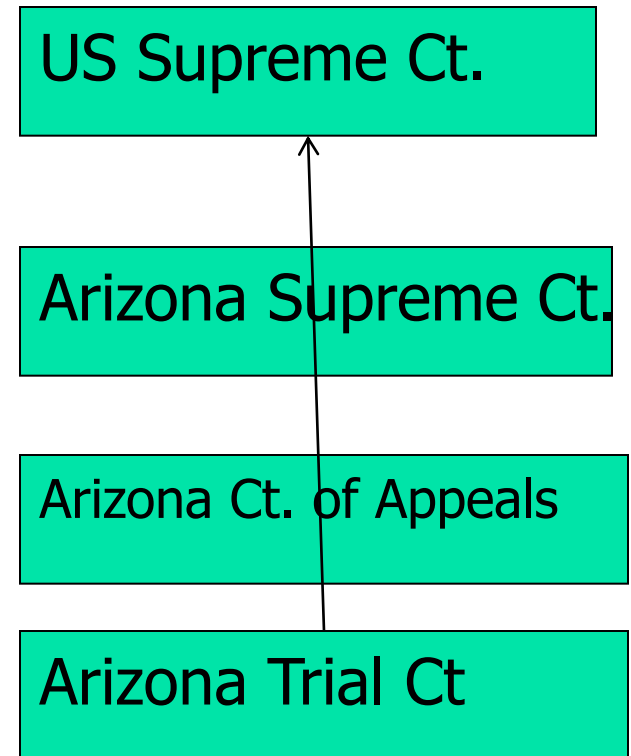
Arizona Trial Ct.



# What do you need to know about the case?

- Prior history of the case
- Subsequent history of the case
  - Same case on appeal
  - Same parties, facts, litigation
  - Affirmed, reversed, modified

- *Miranda v. Arizona*,  
384 U.S. 436 (1966)



# What else do you need to know about the case? (cont.)

- Subsequent treatment of the case
  - How courts unrelated litigation treated the case
    - Different parties, similar facts, litigation
  - Holding criticized, distinguished, followed
- Other resources
  - Such as ALR, Law reviews

*Example:*

*Miranda v. Arizona*,  
384 U.S. 436 (1966)

Cited by *U.S. v. Patane*,  
124 S.Ct. 2620 (2003)

&

thousands of other  
similar cases,

# What is a Citator?

- A tool which allows you to update your work.
- An index to cases (and other materials) which cite your case.
- In the citator, your case is the “cited reference” and the cases which mention it are the “citing references.”



The title of your division (i.e., the legal source you are Shepardizing) appears at the top of the page.

# Printed Sample Citator

a: affirmed  
r: reversed

Look for the first page number of your case in the columns on the page.



A photograph of a wooden bookshelf filled with books. The shelves are made of dark wood and are densely packed with books of various sizes and colors. The books are arranged in rows, with some standing upright and others lying flat. The word "Shepards" is overlaid in white text on the upper left portion of the image. The background is a plain, light-colored wall.

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# Why Use a Citator?

- Update -- to make sure your case is still valid law
  - It may have been reversed on appeal (or reversed in part).
  - It may have been overruled (or narrowed in applicability) by cases outside its appellate line.

# Why Use a Citator cont.

- Research - find other materials about your topic
  - Other cases that cite your case
    - find out what other jurisdictions think
    - find a fact pattern that fits/explains your situation better
  - Law reviews, ALR's that cite your case

# How to use citators

- Concepts in Common
- General Steps/Course of Action
- Shepards on Lexis
- KeyCite on Westlaw



# Concepts in Common

With both vendors, you enter a citation (your case) and you get:

- History of Case
  - Dismissed
  - Affirmed
  - Reversed
  - Modified
  - Vacated
  - Certiorari/rehearing denied by Sup. Ct
- Treatment of Case (indirect history)
  - Followed
  - Explained
  - Questioned
  - Criticized
  - Distinguished
  - Limited
  - Overruled

# Concepts in Common cont.







With both vendors, you enter a citation (your case) and you get:

- A Signal about Your Case (summary of the citing references). E.g., KeyCite: red/yellow flag or Shepards: red stop sign/yellow triangle to warn of negative history.
- Additional Signals
  - there may be additional signals next to the *citing* reference indicating *its* treatment



# Lexis and Westlaw Signals

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-  - Warning: Negative treatment is indicated
  -  - Questioned: Validity questioned by citing refs
  -  - Caution: Possible negative treatment
  -  - Positive treatment is indicated
  -  - Citing Refs. With Analysis Available
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Case overruled/reversed in whole/part



Case has negative history but not overruled/reversed



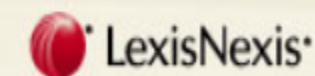
Case has history not known to be negative



Case has citing refs but not negative







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- Warning: Negative case treatment is indicated for statute
- Questioned: validity questioned by citing refs
- Caution: Possible negative treatment
- Positive treatment is indicated
- Citing Refs. With Analysis Available
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\* Click on any Shepard's editorial treatment code (e.g., distinguished, questioned) to view its definition.

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Status flags warn you that history is available for your case and should be investigated.



- In cases and administrative decisions, a **red flag** warns that the case or administrative decision is no longer good law for at least one of the points of law it contains.
- In patents, a **red flag** in Direct History warns that the court holds that all or part of the cited patent is invalid; that the court holds that all or part of the cited patent is invalid, and that it is not infringed by the technology at issue; or that the court holds a patent to be unenforceable due the patentee's inequitable conduct before the patent board. A red flag in Negative Citing References warns that court recognizes that a court in another case has held that the cited patent is invalid.
- In statutes and regulations, a **red flag** warns that the statute or regulation has been amended by a recent session law or rule, repealed, superseded, or held unconstitutional or preempted in whole or in part.



- In cases and administrative decisions, a **yellow flag** warns that the case or administrative decision has some negative treatment, but has not been reversed or overruled.
- In patents, a **yellow flag** in Direct History warns that court rules that the technology at issue does not infringe the cited patent, but does not otherwise rule on the patent's validity; or that the court upholds the validity of all or part of the cited patent, but rules that it is not infringed by the technology at issue. A yellow flag in Negative Citing References warns that the court recognizes that a court in another case has held that the cited patent has not been infringed.
- In statutes and regulations, a **yellow flag** warns that a statute has been renumbered or transferred by a recent session law; that an uncodified session law or proposed legislation affecting the statute is available (statutes merely referenced, i.e., mentioned, are marked with a green C); that the regulation has been reinstated, corrected or confirmed; or that the statute or regulation was limited on constitutional or preemption grounds or its validity was otherwise called into doubt, or that a prior version of the statute or regulation received negative treatment from a court.



In cases and administrative decisions, a **blue H** indicates that there is direct history but it is not known to be negative.

In patents, a **blue H** indicates that the patent is

# Steps to Take

- Check subsequent and prior history
- Check negative cases
  - Are they in your jurisdiction?
  - Are they mandatory or persuasive authority?
  - Are they distinguishable from your case?
- Find other citing cases which may bolster your case



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- ☐ 22. **Limited by, Cited in Concurring Opinion at, Cited in Dissenting Opinion at, Cited by:**  
[United States v. Patane](#), 542 U.S. 630, 124 S. Ct. 2620, 159 L. Ed. 2d 667, 2004 U.S. LEXIS 4577, 72 U.S.L.W. 4643, 2004 Fla. L. Weekly Fed.  
HN15, HN16  
  
**Limited by:**  
542 U.S. 630 [p.636](#)  
124 S. Ct. 2620 [p.2626](#)  
159 L. Ed. 2d 667 [p.674](#)
- ☐ 23. **Distinguished in Concurring Opinion at:**  
[Medina v. California](#), 505 U.S. 437, 112 S. Ct. 2572, 120 L. Ed. 2d 353, 1992 U.S. LEXIS 3696, 60 U.S.L.W. 4684, 6 Fla. L. Weekly Fed. S 539  
Headnotes [HN4](#)  
  
505 U.S. 437 [p.456](#)  
112 S. Ct. 2572 [p.2583](#)  
120 L. Ed. 2d 353 [p.370](#)
- ☐ 24. **Distinguished by, Cited in Dissenting Opinion at, Cited by:**  
[Illinois v. Perkins](#), 496 U.S. 292, 110 S. Ct. 2394, 110 L. Ed. 2d 243, 1990 U.S. LEXIS 2885, 58 U.S.L.W. 4737 (1990)  LexisNexis Headnote  
  
**Distinguished by:**  
496 U.S. 292 [p.295](#)  
496 U.S. 292 [p.296](#)  
110 S. Ct. 2394 [p.2397](#)  
110 S. Ct. 2394 [p.2399](#)  
110 L. Ed. 2d 243 [p.251](#)  
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- ☐ 25. **Distinguished by, Explained by, Cited in Dissenting Opinion at, Cited by:**

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**Key Headnotes:** HN2 (3), HN3 (7), HN4 (11), HN5 (7), HN6 (12), HN8 (5), HN9 (20), HN10 (8), HN11 (10), HN13 (12), HN14 (10), HN15 (5), HN16 (61)

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SUBSEQUENT APPELLATE HISTORY ( 2 citing references ) [Hide Subsequent Appellate History](#)

- ☐ 3. **Writ of certiorari denied:**  
[McNeil v. Economics Laboratory, Inc., 481 U.S. 1041, 107 S. Ct. 1983, 95 L. Ed. 2d 823, 1987 U.S. LEXIS 2021, 55 U.S.L.W. 3746, 42 Empl. \(1987\)](#) [A](#)
- ☐ 4. **Costs and fees proceeding at:**  
[McNeil v. Economics Laboratory, Inc., 1988 U.S. Dist. LEXIS 18590, 48 Fair Empl. Prac. Cas. \(BNA\) 1432 \(N.D. Ill. Nov. 4, 1988\)](#) [A](#)

CITING DECISIONS ( 108 citing decisions )

2ND CIRCUIT - U.S. DISTRICT COURTS

- ☐ 5. **Cited by:**  
[Buscemi v. Pepsico, Inc., 736 F. Supp. 1267, 1990 U.S. Dist. LEXIS 4233, 53 Empl. Prac. Dec. \(CCH\) P39906, 62 Fair Empl. Prac. Cas. \(BNA\) 4](#)  
[736 F. Supp. 1267 p.1270](#)
- ☐ 6. **Cited by:**  
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☐ Tennessee (1)

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# Final Comments

- Differences Between Keycite and Shepards
  - Westlaw: depth of treatment stars
  - organization of results
  - differing editorial analysis



# Classroom exercise

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- Update:
  - ***Miranda v. Arizona*** 384 U.S. 436
  - ***Roe v. Wade***, 410 U.S. 113 (1973)

