

APPENDIX: WESTLAW SEARCHES USED IN THE STUDY

This Appendix sets forth the searches I ran on Westlaw to collect the data for Study Four. Recall that I organized the key numbers chosen for the study into three groups: (1) contract interpretation key numbers from the Contracts topic (topic 95), (2) contract interpretation key numbers from the Evidence topic (topic 157), and (3) parol evidence rule key numbers from the Evidence topic. The search terms for each group are listed below.

Next, I constructed three search queries for each state. The first query contained only the key numbers in group (1). The second contained the key numbers in groups (1) and (2). And the third contained the key numbers in all three groups—(1), (2), and (3). The three queries were run in (a) the relevant state database, and (b) the relevant state and federal databases together. Thus, there were six searches in total for each jurisdiction during both the textualist time period and the contextualist time period. The results of these searches served as proxies for the level of contract *interpretation* litigation.

The three queries were run in exactly the same form in every state database and each of the three is presented below. Running the queries in the state and federal databases together required additional search language to limit the cases retrieved to the appropriate jurisdiction. Accordingly, I have set forth the three queries as run in the Arizona state and federal databases to highlight the limiting language that was necessary.

I also ran a control search for all cases classified with a contracts key number. This search served as a proxy for the total level of *contract* litigation in each state during the time periods of the study. Like the three interpretation queries, the control required additional restrictive language when it was run in both the state and federal databases. I thus have set forth both versions of the control search—state *and* state/federal—again using Arizona as an example of the latter.

Finally, all queries were run with a ten-year date restriction that limited the dataset to cases decided during the designated textualist and contextualist periods for each state. The search language restricting the results to the appropriate time periods is not contained in the queries

below because it varies for each jurisdiction. Instead, I have included the letter x where the numbers setting out the dates would otherwise be.

Group 1: Topic 95 (Contracts), Section II, Subsection (A)—Selected Key Numbers.

95k143 95k143.5 95k147 95k148 95k149 95k150 95k151 95k160
95k161 95k162 95k163 95k164 95k165 95k166 95k167 95k169 95k170
95k171 95k172 95k173 95k174 95k175 95k176 95k190

Group 2: Topic 157 (Evidence), Section XI, Subsection (D)—All Key Numbers.

157XI(D)⁴⁵⁶

Group 3: Topic 157 (Evidence), Section XI, Subsection (A)—All Key Numbers *and* Subsection (C)—Selected Key Numbers.

157XI(A)

157k439 157k440 157k441 157k442 157k443 157k444⁴⁵⁷

Query 1—State (Group 1).

(95k143 95k143.5 95k147 95k148 95k149 95k150 95k151 95k160
95k161 95k162 95k163 95k164 95k165 95k166 95k167 95k169 95k170
95k171 95k172 95k173 95k174 95k175 95k176 95k190) & da(aft
xx/xx/xxxx) & da(bef xx/xx/xxxx)

Query 2—State (Groups 1 & 2).

(157XI(D) (95k143 95k143.5 95k147 95k148 95k149 95k150
95k151 95k160 95k161 95k162 95k163 95k164 95k165 95k166 95k167
95k169 95k170 95k171 95k172 95k173 95k174 95k175 95k176
95k190)) & da(aft xx/xx/xxxx) & da(bef xx/xx/xxxx)

Query 3—State (Groups 1, 2, & 3).

(157XI(D) (95k143 95k143.5 95k147 95k148 95k149 95k150
95k151 95k160 95k161 95k162 95k163 95k164 95k165 95k166 95k167
95k169 95k170 95k171 95k172 95k173 95k174 95k175 95k176
95k190) (157XI(A) 157k439 157k440 157k441 157k442 157k443
157k444)) & da(aft xx/xx/xxxx) & da(bef xx/xx/xxxx)⁴⁵⁸

456. Using this term in a search will retrieve all cases with any key number contained in this section of the Evidence topic outline.

457. These are the selected key numbers from topic 157, section XI, subsection (C).

458. Note that some of the parentheses in these searches are superfluous. I included them when I ran the searches because they make it easier to see precisely what I was searching for without altering the results retrieved.

Query 1—State & Federal (Group 1).

Here is the search I ran for Arizona state and federal cases:

co(az) & (95k143 95k143.5 95k147 95k148 95k149 95k150 95k151 95k160 95k161 95k162 95k163 95k164 95k165 95k166 95k167 95k169 95k170 95k171 95k172 95k173 95k174 95k175 95k176 95k190) & da(aft xx/xx/xxxx) & da(bef xx/xx/xxxx)

Notice the italicized language at the start of the search, which was not included in query 1 when I searched only for state cases. A search using query 1 without the italicized language would have retrieved numerous cases that did not originate in Arizona, such as Ninth Circuit cases that were initially filed in California or another state within that circuit. The italicized language (substantially) restricted the search to cases arising in Arizona.

Comparable language was used in all state/federal searches. For example, I included “co(co)” for the Colorado queries and “co(#ca)” for the California queries.⁴⁵⁹

Query 2—State & Federal (Group 1 & 2).

co(az) & (157XI(D) (95k143 95k143.5 95k147 95k148 95k149 95k150 95k151 95k160 95k161 95k162 95k163 95k164 95k165 95k166 95k167 95k169 95k170 95k171 95k172 95k173 95k174 95k175 95k176 95k190)) & da(aft xx/xx/xxxx) & da(bef xx/xx/xxxx)

Query 3—State & Federal (Group 1, 2, & 3).

co(az) & (157XI(D) (95k143 95k143.5 95k147 95k148 95k149 95k150 95k151 95k160 95k161 95k162 95k163 95k164 95k165 95k166 95k167 95k169 95k170 95k171 95k172 95k173 95k174 95k175 95k176 95k190) (157XI(A) 157k439 157k440 157k441 157k442 157k443 157k444)) & da(aft xx/xx/xxxx) & da(bef xx/xx/xxxx)

Control Search—State.

to(95) & da(aft xx/xx/xxxx) & da(bef xx/xx/xxxx)⁴⁶⁰

Control Search—State & Federal.

co(az) & to(95) & da(aft xx/xx/xxxx) & da(bef xx/xx/xxxx)

459. Note that Westlaw uses the letters “ca” to refer to California *and* to courts of appeal. Thus, to restrict a search to federal cases arising in California, the appropriate court restrictor is co(#ca). The pound sign insures that Westlaw reads “ca” as referring to a state rather than a type of court.

460. This search retrieves all cases tagged with any topic 95 (Contracts) key number in the relevant database.