Reconfiguring Law Reports and the Concept of Precedent for a Digital Age

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Reuschlein Lecture
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Villanova University
School of Law
"It is an established rule to abide by former precedent, where the same points come again in litigation; as well to keep the scale of justice even and steady, and not liable to waiver with every new judge's opinion; as also because the law in that case being solemnly declared and determined, what before was uncertain, and perhaps indifferent, has now become a permanent rule, which it is not in the breast of any subsequent judge to alter or vary from, according to his private sentiments….

– 1 Sir William Blackstone, Commentaries 69
Precedent
Precedent in Contemporary Context

KANSAS JUDICIARY

Supreme Court
7 justices sitting en banc

Court of Appeals
12 judges who normally sit in panels

District Court (31 districts)
239 judges (including 78 magistrates)

Municipal Court (393 cities)
255 judges
Precedent in Contemporary Context

KANSAS JUDICIARY

Supreme Court
~ 880 appeals / year

Court of Appeals
~ 2,000 appeals / year

District Court (31 districts)
~ 500,000 cases / year

Municipal Court (393 cities)
? cases / year
"We have not failed to note the more or less analogous cases from other jurisdictions which the diligence of counsel has brought together for our perusal; but with due respect thereto we are bound to follow our own precedents...."

Precedent – Applied Vertically

“We are duty bound to follow Kansas Supreme Court precedent unless there is some indication that the court is departing from its previous position.”

Precedent –
As in “Not Unprecedented”

“The defendant cites two cases from foreign jurisdictions.... Neither case supports the defendant's position, for the statutes involved are different from our own.... [Consequently,] neither ... provide[s] any precedent for us to follow in the instant case.”

From Law Reports to Precedent Online
Law Reports and Precedent in the Pre-Digital Era
Law Reports and Precedent in the Pre-Digital Era

- Written opinions
- A public reporter of decisions
- Who organizes them, adding indices and other editorial content
- Publication of advance sheets followed by bound volumes
- Distribution at public expense to all judges, sale to lawyers and libraries
“The cases decided by the supreme court of this state … and those of the court of appeals … shall be prepared by the reporter and delivered to the director of printing, who shall as speedily as possible print and publish such number of copies of each volume of the reports as shall be specified by the reporter, and deliver the same to the state law librarian.” – Kan. Stat. §20-205
“The county board may, when in its discretion it shall deem it advisable, provide by purchase or otherwise for the procuring and maintaining of a suitable law library for the use of the public. Such library shall be under the supervision of the judges of the district court of the county wherein the same is located.” – Neb. Laws 1911, c. 73, § 1, p. 319, as amended
Law Reports and Precedent in the Pre-Digital Era
“The cases decided by the supreme court of this state which the court deem of sufficient importance to be published and those of the court of appeals which are to be published pursuant to the rule of the supreme court shall be prepared by the reporter and delivered to the director of printing….” – Kan. Stat. §20-205
Law Reports and Precedent in the Pre-Digital Era

Last year of public law reports:

- Oklahoma - 1953
- Missouri - 1956
- Colorado - 1980
Law Reports and Precedent in the Pre-Digital Era
Law Reports and Precedent in the Pre-Digital Era
The Arrival of Virtual Law
Reports and Libraries
The Arrival of Virtual Law
Reports and Libraries
The Arrival of Virtual Law Reports and Libraries
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10 Day Free Trial

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Accurate

Affordable

Legal Research

Loislaw.com

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The Arrival of Virtual Law
Reports and Libraries

VersusLaw

Search Query

03/01/79 STATE DELAWARE v. EMMONS B. PHILLIPS AND

[1] COURT OF CHANCERY OF DELAWARE, SUSSEX


The Arrival of Virtual Law
Reports and Libraries

LII Backgrounder: State Law on the Net

The LII summer editorial group has recently completed our annual review and update of state legal materials accessible on the Net from non-fee sites. (For the results visit the LII’s state pages.)

As of Sept. 1, 1999 the statutes of all states but Louisiana are accessible and among state top appellate courts only the Connecticut Supreme Court remains offline. But a year ago the statutes of ten states and recent decisions of the top appellate courts of a slightly smaller number were not to be found on the Internet. That itself represented extraordinary progress, for in June 1995 only ten states had their statutes on the Internet.
The Arrival of Virtual Law Reports and Libraries

“Casemaker is the best member benefit the state bar has ever offered. It is worth far more than my annual membership dues. Thanks KBA!”
– David J. Rebein, Rebein Bangerter P.A., Dodge City

If you have questions about Casemaker, please contact your bar.
The Arrival of Virtual Law
Reports and Libraries
The Arrival of Virtual Law
Reports and Libraries

Washburn University Law Library has several sets of Kansas Reports available for sale. We seek to dispose of these items by April 15, 2003.

For further information please see http://washburnlaw.edu/library/usedbooks/

Thanks for your interest.- Martin Wisneski
The Problematic and Costly Status Quo
The Problematic and Costly Status Quo

The Problematic and Costly Status Quo


...

The Problematic and Costly Status Quo

Compare:

The Problematic and Costly Status Quo

“Slip opinions … are subject to modification orders and editorial corrections prior to publication in the official reporters. Consult the bound volumes of Kansas Reports and Kansas Court of Appeals Reports for the final, official texts of the opinions of the Kansas Supreme Court and the Kansas Court of Appeals.”
– http://www.kscourts.org/kscases/
The Problematic and Costly Status Quo
The Problematic and Costly Status Quo

AGREEMENT

For the Printing and Publication of the Reports of the Court of Appeals, the Reports of the Appellate Division, and the Miscellaneous Reports of the State of New York, the Combined Weekly Advance Sheets and Cumulative Tables and Index thereof; a CD-ROM Edition thereof; an On-line Computer Retrieval Data Base Edition thereof; an Opinion Service and an Official Style Manual, for five years from and after January 1, 2006
The Problematic and Costly Status Quo

Reform Is Totally Feasible
Going Beyond Reform to Richer Notions of Precedent

In the
Indiana Supreme Court

In re: Request from
Indiana Court of Appeals to
Post Unpublished Opinions on
Judiciary Website

) ) Indiana Supreme Court
) ) Cause No. 94S00-0608-MS-299
) )

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Going Beyond Reform to Richer Notions of Precedent

RULE 4. "Controlling" and "Persuasive" Designations Based on Form of Publication Abolished; Use of Opinions.

(A) Notwithstanding the prior versions of these rules, designations of, and distinctions between, "controlling" and "persuasive" opinions of the courts of appeals based merely upon whether they have been published in the Ohio Official Reports are abolished.

(B) All court of appeals opinions issued after the effective date of these rules may be cited as legal authority and weighted as deemed appropriate by the courts.

Ohio Rules of Court for Reporting of Decisions
Going Beyond Reform to Richer Notions of Precedent
Going Beyond Reform to Richer Notions of Precedent

Here you will find Supreme Court Civil and Criminal decisions, dating back to 2001.

**Civil Cases are from the following counties:**
- Allegany
- Bronx
- Broome
- Cattaraugus
- Chautauqua
- Cortland
- Delaware
- Erie
- Kings
- Livingston
- Madison
- Monroe
- Nassau
- New York
- Niagara
- Oneida
- Onondaga
- Ontario
- Orange
- Putnam
- Queens
- Richmond
- Schuyler
- Seneca
- Steuben
- Suffolk
- Westchester
- Wyoming Counties

**Criminal Cases are from the following counties:**
- Broome
- Cattaraugus
- Delaware
- Erie
- Kings
- Livingston
- Monroe
- New York
- Oneida
- Onondaga
- Orange
- Queens
- Suffolk Counties
Going Beyond Reform to Richer Notions of Precedent
Going Beyond Reform to Richer Notions of Precedent
Going Beyond Reform to Richer Notions of Precedent
Going Beyond Reform to Richer Notions of Precedent


Pressing pads a “special shade of green-gold”
Going Beyond Reform to Richer Notions of Precedent

Qualitex Co. v. Jacobson Products Co.,

Pressing pads a “special shade of green-gold”
Going Beyond Reform to Richer Notions of Precedent


“a festive and vivid color scheme using top border paint and neon stripes … bright awnings and umbrellas continue the theme”
Going Beyond Reform to Richer Notions of Precedent

Institutional Inhibitions, Sources of Resistance

- Old habits deeply embedded in institutional structures and professional practice
- Powerful commercial interests that benefit from the status quo
- Judicial systems that aren’t
- Judges too busy judging (and well served by the major online vendors) to see the need for or lead change
“We live in the information age. It is vital and exciting to bring the Kansas court system into this new age and to do it right and by the most efficient means.”