

7-24-2017

# The Algorithm as a Human Artifact: Implications for Legal [Re]Search [Appendix B]

Susan Nevelow Mart

*University of Colorado Law School*

Follow this and additional works at: <http://scholar.law.colorado.edu/research-data>

 Part of the [Computer Law Commons](#), [Legal Writing and Research Commons](#), and the [Science and Technology Law Commons](#)

---

## Citation Information

Susan N. Mart, *The Algorithm as a Human Artifact: Implications for Legal [Re]Search [Appendix B]*, 109 LAW LIBR. J. 1 app. B (2017), <http://scholar.law.colorado.edu/research-data/5>.

This Data is brought to you for free and open access by the Colorado Law Faculty Scholarship at Colorado Law Scholarly Commons. It has been accepted for inclusion in Research Data by an authorized administrator of Colorado Law Scholarly Commons. For more information, please contact [erik.beck@colorado.edu](mailto:erik.beck@colorado.edu).

## Appendix B

### Search Instructions for Algorithm Study

Note: Start with Ravel and Casetext. If you do not get ten results, change your jurisdiction to the correct circuit, e.g., in search 2, change N.D. Cal. to Ninth Circuit) Please note that you must remove any unfiltered unreported cases and any Supreme Court cases included in your search results.

1. You are looking for cases discussing the constitutionality of increasing the penalty for a crime when the jury did not make a factual determination about facts that enhanced the penalty.

**Search = criminal sentence enhancement findings by jury required**

Jurisdiction: Sixth Circuit

Source case: *Apprendi v. New Jersey* 530 U.S. 466 (2000)

2. You are looking for case where, despite the fact that state officials have no constitutional duty to protect public at large from crime; the duty is (or is not) imposed by virtue of a special relationship between state officials and particular member of public. (factual contours of special relationship)

**Search =special relationship constitutional duty protect public from crime**

Jurisdiction: Northern District of California (Ninth Circuit)

Source case: *Balistreri v. Pacifica Police Dept.* 901 F.2d 696 (1990)

3. You are looking for cases where federal officials may be liable for damages for violating a person's Fourth Amendment rights

**Search =federal official Fourth Amendment violation damages recoverable** Jurisdiction:

Northern District of Illinois (Seventh Circuit)

Source case: *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971)

4. You are looking for cases that discuss the scope of discretion of school boards in cases involving decisions to remove, retain, or purchase books or other library materials. (right to receive information)

**Search =School board discretion remove retain library material**

Jurisdiction: Western District of Oklahoma (Ninth Circuit)

Source case: *Board of Education, Island Trees v. Pico*, 457 U.S. 853 (1982)

5. You are looking for cases that discuss whether or not a state statute that forbids or proscribes advocacy of the use of force or of actions violating the law is directed to inciting or producing imminent lawless action and is likely to incite or produce such action, and on the basis of that determination concludes that the statute does or does not violate the First Amendment.

**Search = speech advocate imminent lawless action first amendment**

Jurisdiction: Ninth Circuit

Source case: Brandenburg v. Ohio, 395 U.S. 444 (1969)

6. You are looking for cases about administrative searches and whether or not the search does or does not require a 4<sup>th</sup> amendment warrant.

**Search = administrative search 4<sup>th</sup> amendment warrant requirement**

Jurisdiction: Southern District of New York (Second Circuit)

Source case: Camara v. Municipal Court San Francisco, 387 U.S. 523 (1967)

7. You are looking for cases that discuss the contours of the sort of commercial speech that is or is not protected by the First Amendment.

**Search = Commercial speech protected first amendment**

Jurisdiction: Southern District Florida (Eleventh District)

Source case: Central Hudson Gas & Electric Corp. v. Public Service, 447 US 557, 1980.

8. You are looking for cases that discuss situations in which Congressional intent is found to be clear (cases where Congress has spoken directly on the issue) and the court determines if the agency has followed the directives of the legislature.

**Search = Agency follows clear congressional intent**

Jurisdiction: Eastern District of Michigan (Sixth Circuit)

Source Case: Chevron U.S.A., Inc. v. National Resources Defense Council, 467 U.S. 837 (1984)

9. You are looking for a case that discusses the constitutionality of a law limiting offensive speech in a factual scenario where unwilling listeners or viewers heard or saw the offensive speech.

**Search =first amendment offensive speech unwilling listeners viewers**

Jurisdiction: all federal district courts (make sure courts are appropriately limited – take out bankruptcy cases if needed)

Source Case: Cohen v. California, 403 U.S. 15 (1971)

10. You are looking for cases that discuss the types of economic injury that do or do not grant standing to bring suit.

**Search = economic injury constitutional limits standing sue recover**

Jurisdiction: all federal district courts (make sure courts are appropriately limited – take out bankruptcy cases if needed)

Source case: Craig v. Boren, 429 U.S. 190 (1976)

11. You are looking for cases that discuss whether or not an expert's proffered testimony grows naturally and directly out of research conducted independent of litigation.

**Search = expert testimony naturally directly research conducted independent of litigation**

Jurisdiction: All California district courts, Ninth Circuit, and DC Circuit)

source case Daubert v. Merrell Dow, 43 F.3d 1311 (1995).

12. You are looking for cases that discuss state imposed voting restrictions and/or voter qualifications that do or do not survive "close constitutional scrutiny; "There is a constitutionally protected "equal right to vote," but it is not absolute. The states have the power to impose voter qualifications, and to regulate access to the franchise in other ways. But, as a general matter, before that right to vote can be restricted, the purpose of the restriction and the asserted overriding interests served by it must meet close constitutional scrutiny.

**Search = right vote close scrutiny impose voter qualifications purpose restriction**

Jurisdiction: Jurisdiction: all federal district courts (make sure courts are appropriately limited – take out bankruptcy cases if needed).

Source case: Dunn v. Blumstein, 405 U.S. 330 (1972)

13. You are looking for cases that discuss defenses or rebuttals to the same actor inference when it is raised as a defense in a defendant's summary judgment motion in an employment discrimination case.

**Search = "same actor" inference employment discrimination summary judgment**

Jurisdiction: All New York District Court

Source case: none

14. You are looking for cases where a municipal employee is or is not entitled to absolute immunity; in most cases there is no bar to a holding a municipality liable for the acts of its employees (contours of municipal liability for employee violating someone's civil rights).

**Search = municipal liability civil rights violation employee**

Jurisdiction: Sixth Circuit

Source case: Monell v. Department of Social Services of City of New York, 436 U.S. 658 (1978)

15. You are looking for cases where the court is reviewing a request to compel an agency to act after an agency's "final agency action" (agency rejects proposed course of action; agency delays unreasonably in responding to a request for action; or delays in responding until requested action ineffective) when it had a statutory duty to act and has not.

**Search = Court review request compel agency failure to act**

Jurisdiction: Northern District of Illinois - (Seventh Circuit)

Source case: Norton v. South Utah Wilderness Alliance, 543 U.S. 55 (2004).

16. You are looking for cases that discuss the factual evidence that will or will not satisfy the objective component of a fear of persecution (what does or does not count as credible, direct and specific evidence of facts supporting the objective fear of persecution).

**Search = objective fear persecution credible direct specific evidence**

Jurisdiction: Ninth Circuit Courts of Appeal –

Source case: Fisher v. I.N.S., 79 F.3d 955 (1996)

17. You are looking for cases that discuss civil situations where the loss of fundamental rights is at issue, and the court does or does not find waiver.

**Search = loss civil fundamental rights waiver presumption against**

Jurisdiction: All New York District Courts

Source case: Fuentes v. Shevin, 407 US 67 (1972)

18. You are interested in cases that discuss the factual circumstances where a plaintiff does or does not carry the ultimate burden of proving that the employer's reason for its adverse employment decision was a pretext for intentional age discrimination.

**Search = adverse employment decision pretext intentional age discrimination**

Source case: Gallo v. Prudential, 22 F.3d 1219 (1994)

Jurisdiction: Eastern District of New York – Second Circuit

19. You are looking for cases that discuss situations where job performance is or is not related to race (parameters of acceptable racial classifications for work).

**Search = job performance racial classification constitutional**

Jurisdiction: District of the District of Columbia (D.D.C.) D.C. Circuit

Source case: Griggs. et al. v. Duke Power Co., 401 U.S. 424 (1971)

20. You are looking for cases that discuss what will or will not qualify as proof of economic persecution in asylum cases. (While recognizing that economic deprivation may constitute persecution, an asylum applicant must offer some proof that he suffered a deliberate imposition of substantial economic disadvantage.

**Search = proof persecution economic disadvantage asylum**

Jurisdiction: Ninth Circuit Courts of Appeal –

Source case: Guan Shan Liao v. U.S. Dept. of Justice, 293 F.3d 61 (2002)

21. You are looking for cases that discuss the right to receive information (The right of freedom of speech and press includes not only right to utter or to print, but the right to receive, right to read and freedom of inquiry, freedom of thought...).

**Search = right to receive information first amendment**

Jurisdiction: Ninth Circuit

Source case: Griswold v. Connecticut, 381 U.S. 479 (1965)

22. You are looking for cases where the court has or has not allowed a particular scientific methodology to be used in court based on the enumerated standards. (Several factors that a district court should take into account in evaluating whether a particular scientific methodology is reliable include the testability of the expert's hypothesis, whether the methodology has been subjected to peer review and publication, the frequency by which the methodology leads to erroneous results, the existence and maintenance of standards controlling the technique's operation, and whether the methodology has been generally accepted in the scientific community).

**Search = evaluation allow new scientific methodology**

Jurisdiction: Third Circuit (may have to delete Supreme court case)

Source case: In re Paoli RR, 35 F3d 717 (1994)

23. You are looking for civil rights cases where the court has (or has not) awarded attorney's fees and the trial court has (or has not) abused its discretion in awarding the amount of the fees (your client was awarded an amount of fees and you are deciding whether or not to appeal; is your client's fee award within the ballpark?).

**Search = trial court abuse discretion award attorney fees civil rights**

Jurisdiction: M.D. Fla. (11<sup>th</sup> Circuit, Florida)

Source Case: Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (1974)

24. You are looking for cases that discuss the factual boundaries between punishment and police brutality in prison cases (not every assault amounts to a constitutional violation and ; in determining whether the constitutional line has been crossed, a court must look to such factors as the need for the application of force, the relationship between the need and the amount of force used, the extent of injury inflicted, and whether force was applied in a good-faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm.

**Search = prison brutality civil rights violation constitutional**

Jurisdiction: Eleventh Circuit Courts of Appeal

Source case: Johnson v. Glick, 481 F.2d 1028 (1973)

25. You are looking for cases that discuss new factual situations where the court defines the limits of public and private in the context of the Fourth Amendment. (Fourth Amendment protects people, not simply areas, against unreasonable searches and seizures, and its reach cannot depend upon presence or absence of a physical intrusion into any given enclosure).

**search = private public limits fourth amendment search seizure**

Jurisdiction: E.D. Mich. (Sixth Circuit)

Source case: Katz v. United States, 389 U.S. 347 (1967)

26. You are looking for cases that discuss government officials performing discretionary functions whose actions do or do not violate clearly established statutory or constitutional rights; do the employees get the benefit of a qualified immunity from suit or not?

**Search = government employee discretionary function qualified immunity**

Jurisdiction: Eleventh Circuit

Source case: Lassiter v. Alabama A & M Univ., Bd. of Trustees, 28 F.3d 1146 (1994)

27. You are looking for cases that discuss exceptions to the three-part Lemon test: to avoid conflict with the religion clauses of the First Amendment, statute must have secular legislative purpose, its principal or primary effect must be one that neither advances nor inhibits religion, and it must not foster excessive government entanglement with religion.

**Search = school first amendment religion clause exception lemon test**

Jurisdiction: D.C. District

Source case: Lemon v. Kurtzman, 403 U.S. 602 (1971)

28. You are looking for cases where the court discusses the introduction or exclusion of extrinsic evidence in a Markman hearing; in a Markman hearing, the judge examines all of the evidence, including the evidence of the patentee's own definition of word in the patent, so long as the patent clearly defines those terms. The court may or may not allow extrinsic evidence on the meaning of words in a patent.

**Search = patentee special definition clearly defined markman hearing extrinsic evidence**

Jurisdiction: D.Del. (Third Circuit)

Source case: Markman v. Westview Instruments, Inc., 52 F.3d 967 (1995)

29. You are looking for cases where the court discusses state laws or regulations that allegedly interfere with the right of parents to control the education their children, in violation of the 14<sup>th</sup> Amendment.

**Search = state control english only violate fourteenth amendment parent educate child**

Jurisdiction: Ninth Circuit and all district court cases

Source case: Meyer v. State of Nebraska, 262 U.S. 390 (1923)

30. You are looking for cases that discuss patently offensive depictions or description of sexual conduct that does or does not have enough serious literary, artistic, political, or scientific value to merit First Amendment protection that is shown or available in a public place (obscenity cases).

**Search = first amendment protection public obscenity literary artistic political scientific value**

Jurisdiction: Second Circuit and all district court cases

Source Case: Miller v. California, 413 U.S. 15 (1973)

31. You are looking for cases that discuss a juvenile defendant waiving the right to counsel and to remain silent, and examining whether or not the defendant made the waiver “voluntarily, knowingly and intelligently.”

**Search = juvenile defendant waive right counsel voluntarily knowingly intelligently**

Jurisdiction: Ninth Circuit

Source case: Miranda v. Arizona, 384 U.S.436 (1966)

32. You are looking for cases that discuss government denial of a benefit in the context of non-tenured employment, where the allegation that the benefit denied to a person on a basis that infringes constitutionally protected interests, especially the interest in freedom of speech.

**Search = non tenure right continued employment deny benefit constitution protect freedom**

Jurisdiction: D.C. Circuit

Source case: Perry v. Sindermann, 408 U.S. 593 (1972)

33. You are looking for cases where an employee claims that he or she was fired or adversely affected in retaliation for asserting a protected right (plaintiff claims racial, sex or age discrimination, or is a whistleblower, for example, and then is terminated (scope of claim of retaliatory termination).

**Search = adverse employment action protected activity pretext retaliation**

Jurisdiction: S.D. FL (Eleventh Circuit)

Source case: Hairston v. Gainesville Sun Pub. Co., 9 F.3d 913 (1993)

34. You are looking for cases that discuss the circumstances where selective exclusions from a public forum are or are not found to be on the basis of content (do or do not violate the First Amendment).

**Search = first amendment violation content public forum**

Jurisdiction: Eastern District of California (9th Circuit)

Source case: Police Dep't of Chicago v. Mosley, 408 U.S. 92 (1972)

35. You are looking for employment discrimination cases where the plaintiff's age actually did or did not play a role in employer's decision making process and had a determinative influence on the outcome (contours of employer's decision).

**Search = age employment discrimination disparate treatment**

Jurisdiction: N.D. Cal.(Ninth Circuit)

Source case: Reeve v. Sanderson Plumbing, 530 U.S. 133 (2000)

36. You are looking for cases that discuss whether or not the state's interest that is being promoted in an affirmative action plan is compelling enough to sustain the program.

**Search = affirmative action program tailor serve compelling state interest**

Jurisdiction: D.C. Circuit

Source case: Regents of the University of California v. Bakke, 438 U.S. 265 (1978)



37. You are looking at cases that the court determines a law is (or is not) punishing a status rather than a criminal act. (State law which made “status” of narcotic addiction a criminal offense for which offender might be prosecuted at any time before he reformed, and upon conviction required imprisonment of at least 90 days in a county jail, inflicted a “cruel and unusual punishment,” in violation of the Fourteenth Amendment).

**Search = criminalizing status cruel unusual punishment**

Jurisdiction: S.D.N.Y. (Second Circuit)

Source case: Robinson v. State of California, 370 U.S. 660 (1962)

38. You are looking for cases that discuss circumstances in which the age of the defendant is (or is not) a mitigating factor for the imposition of criminal penalties (what is the dividing line for being a “juvenile” in criminal sentencing?).

**Search = age juvenile defendant mitigate impose criminal penalty**

Jurisdiction: Ninth Circuit

Source case: Roper v. Simmons, 543 U.S. 551 (2005)

39. You are looking for cases that discuss the constitutionality of a state scheme to fund education through taxation; your client wants to know if an innovative tax scheme will survive a court challenge.

**Search = state funding education local tax fourteenth amendment**

Jurisdiction: E.D. Mich. (Sixth Circuit)

Source Case: San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1 (1973)

40. You are looking for banking industry cases where fraud has been alleged, and the plaintiff’s pleadings do (or do not) allege facts that give rise to a strong inference of fraudulent intent. The requisite “strong inference” of fraud may be established either (a) by alleging facts to show that defendants had both motive and opportunity to commit fraud, or (b) by alleging facts that constitute strong circumstantial evidence of conscious misbehavior or recklessness.

**Search = allege motive opportunity strong inference fraudulent intent banking**

Jurisdiction: S.D.N.Y. (Second Circuit)

Source Case: Shields v. Citytrust Bancorp, Inc., 25 F.3d 1124 (1994)

41. You are looking for cases where your client, an asylum seeker, is trying to establish a well-founded fear of persecution. For purposes of establishing eligibility for asylum, alien cannot simply prove that there exists generalized or random possibility of persecution; alien must show that he or she is at particular risk, that is, that his or her predicament is appreciably different from dangers faced by his or her fellow citizens.

**Search = alien asylum particular risk persecution**

Jurisdiction: First Circuit

Source case: Singh v. I.N.S., 134 F.3d 962 (1998)

42. You are looking for cases where the court discusses the ineffective assistance of counsel in the context of a psychiatric evaluation or psychiatric evidence.

**Search = ineffective assistance counsel psychiatric evaluation undermine adversarial process**

Jurisdiction: S.D. Texas (Fifth Circuit)

Source case: Strickland v. Washington, 466 U.S. 668 (1984)

43. You are looking for cases that discuss whether or not a criminal statute violates the commerce clause by examining if (1) the statute by its terms has anything to do with “commerce” or any sort of economic enterprise, that is, whether the activity prohibited by the statute was an economic activity that might substantially affect any sort of interstate commerce; and (2) if the statute contained any jurisdictional element to ensure, through case-by-case inquiry, that the prohibited activity had any concrete tie to interstate activity (contours of court’s allowing a criminal statute to stand or strike it down in the context of the commerce clause).

**Search = criminal statute violate commerce clause economic activity interstate**

Jurisdiction: S. D. Fla. (Eleventh Circuit)

Source case: U.S. v. Lopez, 514 U.S. 549 (1995)

44. Your client has been forced to appear at a pre-trial proceeding without having an attorney present, so you are looking for cases that discuss the pre-trial situations or proceedings where the accused is (or is not) entitled to the presence of counsel (what counts as sufficiently serious to require the presence of counsel?).

**Search = pretrial proceedings right to counsel**

Jurisdiction: N.D. Illinois (Seventh Circuit)

Source case: U.S. v. Wade, 388 U.S. 218 (1976)

45. You are looking for cases that discuss factual situations involving the right to receive information as a listener or recipient of information.

**Search = right to receive information**

Jurisdiction: S.D. N. Y. (Second Circuit)

Source case: Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, 425 U.S. 748 (1976)

46. You are looking for cases where the plaintiff did or did not establish that she applied for an available position for which she was qualified, but was rejected under circumstances which give rise to an inference of unlawful discrimination.

**Search: qualified applicant inference unlawful discrimination**

Jurisdiction: Third Circuit

Source Case: Texas Dep’t. of Community Affairs v. Burdine, 450 U.S. 248 (1981)

47. You are representing a potential competitor who is accusing a company of fixing prices for its distributors within territories. You are looking for cases that discuss what kinds of agreements are per se violations of the Sherman Act.

**Search = Sherman antitrust vertical restraints per se violation**

Jurisdiction: S.D. New York (Second Circuit)

Source case: none

48. You are looking for cases about the provision of government benefits to aliens, as persons included in the Fifth Amendment, and entitled to the equal protection of the law.

**Search = aliens government benefits equal protection fifth amendment**

Jurisdiction: D.D.C.(D.C. Circuit)

Source case: Plyler v. Doe, 457 U.S. 202 (1982)

49. You represent a class claiming that a controversial state law unconstitutionally deprived the class member of the equal protection of the law in violation of the state constitution, and you are looking for cases that discuss the scope of the political question doctrine, which prevents the court from deciding a political question.

**Search = political question doctrine fundamental constitutional right fourteenth amendment**

Jurisdiction: D.D.C. (D.C. Circuit)

Source case: Baker v. Carr, 369 U.S. 186 (1962)

50. You are looking for case where the court does (or does not exercise jurisdiction over the acts of a foreign power, discussing the acts of state doctrine.

**Search = act of state doctrine judicial review validity foreign acts**

Jurisdiction: D.C. Circuit

Source case: Banco Nacional de Cuba v. Sabbatino, Receiver, et al., 376 U.S. 398 (1963)