Appellate Jurisprudence in the Internet Age

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• Authority is often used by judges for a number of good reasons including:

  – “The authority cited sets out the applicable law in the instant case, and the judge had no choice but to apply it. This is a strict doctrine of stare decisis rigidly applied. Under it the judge finds and applies the existing law ...” ;

  – “The authority cited sets out the applicable law which, as a matter of policy, the judge should apply unless other policy considerations require him to abandon precedent ...” ;

  – “The authority cited contains a rule which, of several possible applicable rules, the judge prefers to apply to this case ...” ; and

  – “The authority cited is in support of the position the judge wishes to take and therefore lends weight to it ...”.
Cal. S. Ct. Decisions from 1950

- 2160 Cal. S.Ct. decisions were cited.
  - 43% were from the previous 10 years (1940-1950)
  - 20% were from the 10 years before that (1930-1939)
  - Same pattern is repeated with the 1132 citations to the lower Cal. Appellate courts.
Cal. S. Ct. Decisions from 1950

- 582 citations to federal courts,
- 562 citations to other state courts,
- 87 citations to law reviews,
- 32 citations to Restatements,
- 134 citations to legal encyclopedias,
- 195 citations to other secondary sources.
• 2660 Cal. S.Ct. decisions were cited.
  – 51% were from the previous 10 years (2004-2014)
  – Pattern is not repeated with the 447 citations to the lower Cal. Appellate courts.
    • Only 39% were decided between 2004-2014.
Cal. S. Ct. Decisions from 2014

• 556 citations to U.S.S.Ct.; 160 to lower federal courts,
• 177 citations to other state courts,
• 49 citations to law reviews,
• 18 citations to other legal secondary sources,
• 6 citations to non-legal sources,
• 16 citations to sources identified with the Internet.
Decisions of the U.S.S.Ct. 1946-2005

• “[t]he effect of going from being recently decided to just 10 years of age reduces a precedent’s value by 65 percent and 72 percent at the Supreme Court and courts of appeals, respectively.”
U.S.S.Ct. Decisions from 2012

- 1445 U.S.S.Ct. decisions were cited.
  - 46.5% were from the previous 20 years
- 349 U.S. Ct. of Appeals decisions were cited.
  - 78.5% were from the previous 20 years.
- 182 State Court decisions were cited.
  - 67% were from the previous 20 years.
U.S.S.Ct. Decisions from 2012

• 69 citations to law reviews,
• 167 citations to non-legal sources,
• 37 citations to sources identified with the Internet.
Citation to Legal Periodicals

• 1950 Cal. S.Ct. cited these 87 times.
• 2014 Cal. S.Ct. cited these 49 times.

• U.S.S.Ct. cited legal periodicals:
  – 1971-1973  963 times;
  – 1981-1983  767 times;
  – 1991-1993  577 times;
  – 1996-1998  271 times;
  – 2012      69 times.
We should focus on the following questions:

• [U]sers may find a wide range of information, but how well do they understand exactly what they have found?
• Do they know whether it is the current law?
• Do they understand what is missing?
• Do they recognize whether or how well their results answer their original query?
• Do they understand how their results raise new queries altogether?
• Do they see what criteria have been used to judge relevance in the retrieved list?