

Appellate Jurisprudence in the Internet Age

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2015**

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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 therefor 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.

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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.

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Cal. S. Ct. Decisions from 2014

- 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.

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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.

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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.”

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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.

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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.

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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.

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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?