

Supreme Court Justices: Addicted to Google

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Everyone knows that Google is changing the way college kids write their term papers. What's less obvious is that it's also changing the way that judges write their opinions -- even America's most august judges, those on the Supreme Court. In an absolutely fascinating article in the *Virginia Law Review*, "[Confronting Supreme Court Fact Finding](#)," Allison Orr Larsen, a law professor at William & Mary, shows just how prevalent online research is at the Supreme Court. "In-house research," she argues, much of it done online, is changing the way America's highest court works, and not for the better.

All legal cases, Larsen points out, rest to some degree on facts, and, traditionally, the courts have relied upon what's called the "adversary system" to deal with them. Either side can introduce factual evidence into argument; if the other side thinks the facts are wrong, they can dispute them in court. Judges try to work with facts which have been vetted by both sides. Occasionally extra research might seem warranted, as when Harry Blackmun camped out at the Mayo Clinic Library, doing research for *Roe v. Wade*. By and large, though, judges stick to the facts cited in the briefs, because they're open to criticism from all parties.

All that is changing, though, because the web puts so much information right at the judge's fingertips. Now, Supreme Court justices spend time Googling around, looking for facts to support their opinions. Around half of the facts cited in a typical Supreme Court brief now come, Larsen writes, "from sources that are not strictly 'legal.'" Check out her list of examples:

On their own, the justices found factual information from journals of social science -- including the *American Sociological Review*, the *Journal of College Student Development*, the *Journal of Substance Abuse*, and from the *National Association of Social Workers*. They also pursued and cited evidence from medical sources like: the *Cleveland Clinic Journal of Medicine*, *JAMA*, the *New England Journal of Medicine*, and the *Journal on Obstetrics and Gynecology*....

In addition, the Justices were prone to rely on stories found in newspapers or magazines of general circulation. These include nationally circulated periodicals like

the *New York Times*, and the *Wall Street Journal*, but also stories from the *Sacramento Bee*, the *Arkansas Gazette*, and the *Tampa Tribune*, to name a few. The justices also independently found and relied on articles in magazines with more niche audiences: like, for example, *Musicweek*, *Digital Entertainment*, *Mediaweek*, *Sporting News*, and *Golf Magazine*....

Importantly, statistics were independently gathered from websites with widely ranging indicia of reliability. Some numbers came from government agency websites like the FDA or Customs and Border Patrol. Others originated from non-profit organizations like the Rape Abuse and Incest National Network, the Cato Institute, Reproductive Rights.org, or opensecrets.org (a site that tracks political campaign contributions).

What were all these facts for? Larsen explains:

I found opinions citing independently-found authorities to answer questions of medicine (How long do symptoms of carpal tunnel persist? What diseases can be attributed to obesity?), questions about nature (Can naturally occurring silt clog a river and restrict a dam? How much carbon dioxide emissions exist in the atmosphere), and questions of social science (are poor women more likely to have late-term abortions? Does the death penalty have a deterrent effect? What are the emotional consequences of prison? Do people take race into account when evaluating jurors?).

The justices go beyond the adversary system to assert facts about economics, international practices, and emerging new technology. And it is quite common for them to cite raw statistics of all types -- collected from websites, solicited from agencies, or found in a journal -- about a huge range of prevailing practices or social norms.

"All members of the Court do it," Larsen reports, "regardless of whether they are traditionally labeled liberal or conservative."

To a degree, it's all about style, since citations make an opinion feel more authoritative. But the facts the Justices find also influence their decisions. Historical facts about the founders and the Constitution are particularly influential -- but so are more ordinary facts about, say, the number of fatalities which occur when a suspect flees from police in a vehicle, or about the number of juvenile offenders who go on to serve life sentences for non-homicide offenses. (In the latter case, the Justice Kennedy cited a report he obtained independently, from the Bureau of Prisons; later, that report was revealed to be full of false information.)

This is a bad development, Larsen believes, for a few reasons. For one thing, it means that the facts the justices cite never have to face scrutiny. For another, "in-house" facts are easily shaped by bias. Much of that bias, Larsen points out, may even be unintentional -- the inevitable result of using search websites, which [shape the results you find according to your preferences and tastes](#). Because of the way Google works, Larsen warns, searches "could produce different results for different chambers depending on, for example, the internet history (or Facebook profile!) of the users."

What to do? In-house judicial research should either be shut down, she concludes, or delegated to a responsible and independent research group. The court should consider "creating a judicial research service akin to the Congressional Research Service from which judges can request help." (*Read the whole paper [here](#), h/t to Ted.*)