

THE ETHICS OF JUDICIAL USE OF THE INTERNET: 10 REAL-LIFE CASE STUDIES

Hispanic National Bar Association
Judicial Council Program
Kansas City
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Presenters

Eric J. Magnuson
Robins Kaplan LLP

Hon. Patricia Nieto
Los Angeles Superior Court

Hon. Alberto Rivas
Superior Court of New Jersey,
Middlesex County



JUDGES THAT GOOGLE

- Does this:



- Go with this?



CONSIDERATIONS

WHEN DID IT START?

- Primary, secondary and non-legal resources
- *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993)



Coleen M. Barger, *On the Internet, Nobody Knows You're a Judge: Federal Appellate Courts' Use of Internet Materials in Judicial Opinions*, 4 J. App. Prac. & Proc. 417 (2002).

SCENARIO 1

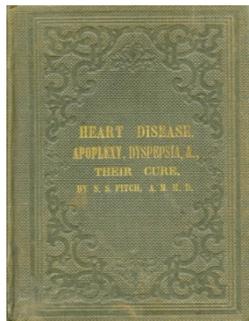
- Employee filed claim for workers' compensation benefits
- Employee claimed that heart attack was caused by "*unusual exertion*"
- Industrial Commission denied benefits
- Intermediate App Ct reversed and remanded to award benefits
 - Ct took judicial notice of "*certain scientific propositions*" found in medical treatises and rejected the testimony of Employer's medical expert
- State Sup Ct granted review



DID THE INTERMEDIATE APP CT PROPERLY APPLY THE DOCTRINE OF JUDICIAL NOTICE?

YES

NO



Case 1:12-cv-00848-GJS Document 22 Filed 08/07/12 Page 3 of 1

Steve Alan Magaña
1701 Riverside 4, Emeryville, Sonoma, Pacific
P.O. Box 242463
Alhambra, California 91824 (650) 932-9797
District of Columbia
District of Columbia
Steve Alan Magaña, Complainant
Agent Case Number: DCV8961008
Ottawa County, et al., Respondents.

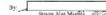
JUDICIAL NOTICE

Complainant, Steve Alan Magaña, gives Notice to the Court:

NOTICE: This Court is advised, and set on administrative proceedings, and is governed by **Equity Jurisdictions**, against public officers in their individual capacity, and:

FURTHER NOTICE: This Court shall take Mandatory Judicial Notice of the **Media** presenting **Equity Jurisdictions**. They be at the foundation of universal justice, and have been verified and fully called upon upon the "the best of the best", see, "A Tutorial On Data In Character" by Henry P. Gilbert, (1911 - 1997), International Science Institute, and:

FURTHER NOTICE: FAIR WARNING, NOT AS A THREAT, NOTICE pursuant to **David Bruce v. Carter**, 329 U.S. 276 and **Anderson v. Creighton**, 483 U.S. 675, is hereby given each and every member of the attorney profession. **Dated this August 11, 2012.**

By:  Steve Alan Magaña

1. Whether to allow public notice on the digital or electronic network is the court's prerogative. A notice may be called because the party is accused and its authority has been certified, and the court is required to take notice of the same. The court is required to take notice of the same. The court is required to take notice of the same. The court is required to take notice of the same.

Judicial Notice



NO

Prestige Homes, Inc. v. Legouffe,
658 P.2d 850 (Colo. 1983)

- Sup Ct reversed, concluding it was erroneous to apply judicial notice
 - Facts subject to judicial notice are those *"not subject to reasonable dispute"* and must be either *"generally known within the territorial jurisdiction of the trial court"* or *"capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned"*

NO

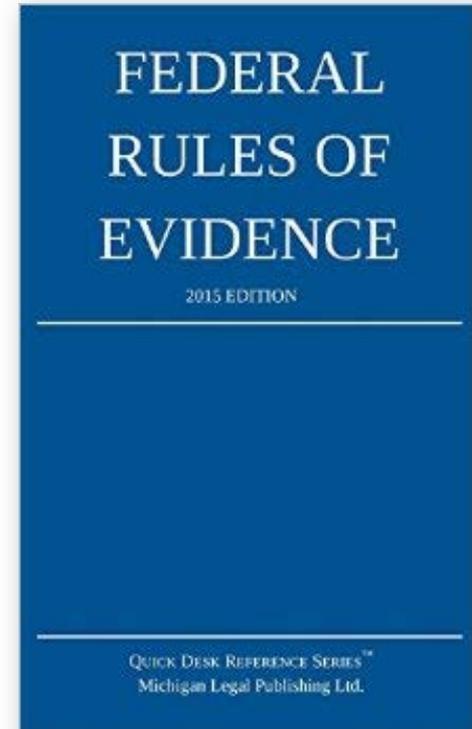
Prestige Homes, Inc. v. Legouffe,
658 P.2d 850 (Colo. 1983)

- Ct of App erred in relying on medical treatises not in evidence
- Sup Ct rejected comparison between facts judicially noticed here with *"simple mathematical calculations based on distance and speed"*
- *"Courts cannot indulge in arbitrary deductions from scientific laws as applied to evidence except where the conclusions reached are so irrefutable that no room is left for the entertainment by reasonable minds of any other conclusion."*

CONSIDERATIONS

Fed. R. Evid. 104(a)

- The court *"is not bound by evidence rules, except those on privilege"* in determining scientific admissibility questions.



CONSIDERATIONS



"Judges deciding scientific admissibility questions can therefore evade some obstacles which would ordinarily hinder their ability to do independent research."

Edward K. Cheng, *Independent Judicial Research in the Daubert Age*, Duke L.J. 56, 1289 (2007).

SCENARIO 2

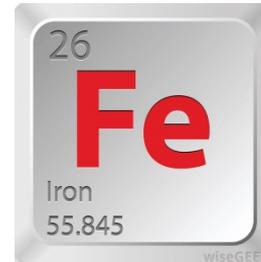
- Trial judge is faced with difficult scientific admissibility questions in a personal injury case
- Trial judge independently obtains medical journal articles on iron poisoning prior to hearing expert testimony
- Trial judge excludes proffered expert testimony



DID THE TRIAL COURT PROPERLY CONSIDER EXTRA-RECORD MEDICAL LITERATURE?

YES

NO



YES

Johnson v. United States,
780 F.2d 902 (11th Cir. 1986)

- The exclusionary ruling was reversed on other grounds. However, the App Ct made the following observations:
 - It is common knowledge that courts occasionally consult sources not in evidence, ranging from dictionaries to medical treatises
 - Judge's findings are not necessarily tainted because he brought experience and knowledge to bear in assessing evidence

YES

Johnson v. United States,
780 F.2d 902 (11th Cir. 1986)

- Additional observations:
 - Trial judge may not undertake an independent mission of finding facts outside the record
 - Judge's actions were affirmed based in part on his statement that he "did not rely" on the outside sources in reaching his conclusions

CONSIDERATIONS

Is it desirable for a judge to find and read peer-reviewed medical journal articles, or medical treatises, in a case involving medical questions?



YES



NO

SURVEY OF STATE APPELLATE JUDGES

Figure 1. Desirability of Judges Independently Reading Medical Journals

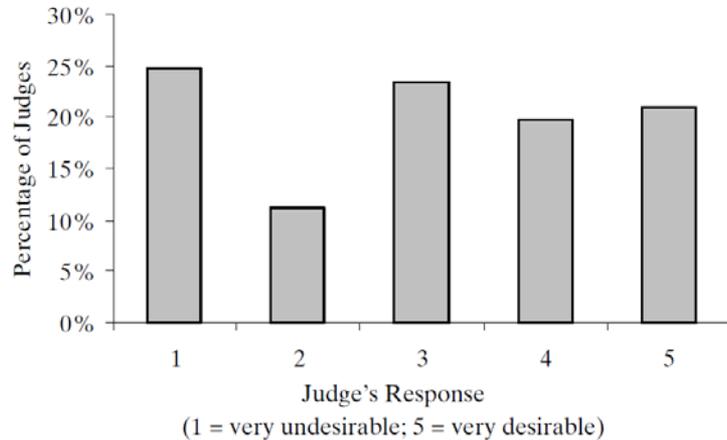
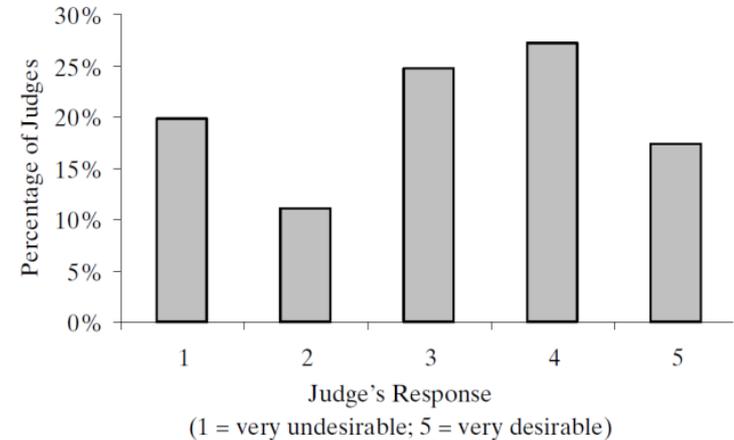


Figure 2. Desirability of Judges Independently Reading Medical Treatises

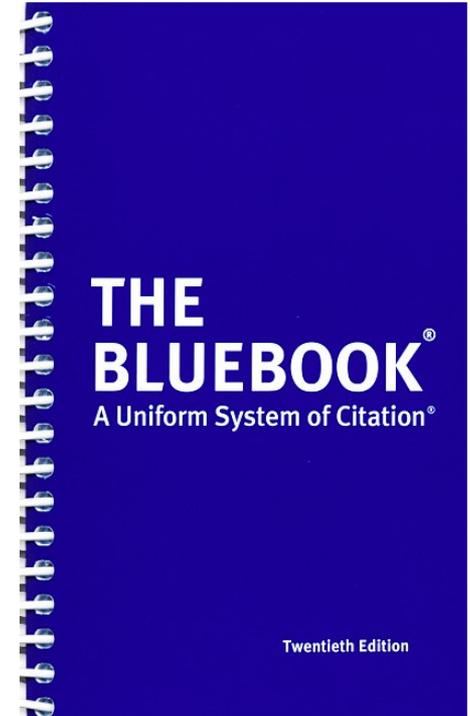


Edward K. Cheng, *Independent Judicial Research in the Daubert Age*, 56 Duke L.J. 1263, 1277 (2007)

THE MOVE TO THE INTERNET...

WHAT IS THE STATE OF THE ART?

- THE BLUEBOOK – a Uniform System of Citation (20th Edition)
- **Rule 18: INTERNET, ELECTRONIC MEDIA AND OTHER NON-PRINT RESOURCES**
 - **Rule 18.2** covers citation of information found on the Internet



SCENARIO 3

- Federal court litigation
- Jurisdiction: diversity of citizenship
- Alleged and admitted:
 - Plaintiff corporation was MO resident with principal place of business in MO
 - Defendant was a DE LLC, with principal place of business in IL
- District court accepted jurisdictional assertions, held jury trial, and rendered judgment for Plaintiff



SCENARIO 3

- On appeal, Ct announced:
 - Ct conducted independent research on whether Defendant LLC had any partners who resided in MO
 - Ct discovered that Plaintiff was incorporated in IL, rather than MO
- Since both sides were citizens of IL, Ct held diversity of citizenship was lacking



DID APPELLATE COURT EXCEED PROPER BOUNDS IN PERFORMING THIS RESEARCH?

YES

NO



NO

Belleville Catering Co. v. Champaign Market Place, LLC,
350 F.3d 691 (7th Cir. 2003)

- Ct concluded that it had an independent duty to investigate jurisdiction
- Ct notified both sides of its research results
- Ct asked for comments before it ruled
- After submissions, Ct ruled there was no jurisdiction

NO

*Belleville Catering Co. v. Champaign Market Place, LLC,
350 F.3d 691 (7th Cir. 2003)*

- Ct said it had authority to govern counsel:
 - *“The best way for counsel to make the litigants whole is to perform, without additional fees, any further services that are necessary to bring this suit to a conclusion in state court, or by settlement.”*



CONSIDERATIONS

- The ABA Commission to evaluate the Code of Judicial Conduct explicitly addressed the research issue in the 2007 ABA Model Code



CONSIDERATIONS

- **Rule 2.9(C)** provides: *"A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may be properly judicially noticed."*
- **Comment 6** notes that *"[t]he prohibition against a judge investigating the facts of the matter extends to information available in all mediums, including electronic."*

ABA Model Code of Jud. Conduct, R. 2.9(C) & cmt. 6



SCENARIO 4

- Plaintiff medical provider sued Defendant insurer to recover first-party no-fault benefits for medical services rendered to passenger
- Insured was U-Haul, which leased rental vehicle to NY resident
- Passenger was NY resident
- Defendant insurer moved to dismiss for lack of personal jurisdiction
 - it did not write, sell, or solicit any insurance policies in NY
 - policy was written in AZ



SCENARIO 4

- Ct denied motion to dismiss based on its own internet research:
 - Insured was world's largest consumer truck and trailer rental operation and did business in all 50 states
 - State website indicated that Defendant Insurer was licensed to do insurance business in NY
- Evidence not presented to Ct
- Ct did not make specific finding as to whether Defendant Insurer actually transacted any business in NY



DID THE CT PROPERLY BASE ITS DECISION ON FACTS IT DISCOVERED ON THE INTERNET?

YES

NO



NO

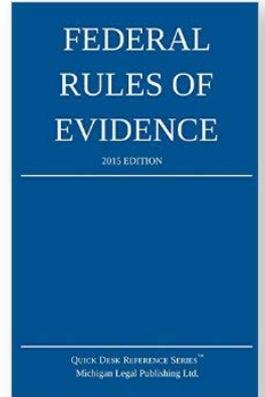
*NYC Medical & Neurodiagnostic, P.C. v. Republic W. Ins. Co.,
798 N.Y.S.2d 309 (NY. App. Div. 2004)*

- App Ct concluded the trial court improperly made findings of fact based upon its own internet research
- Dissenting judge asserted website of the NY Department of Insurance was properly relied upon, under judicial notice

CONSIDERATIONS

Fed. R. Evid. 201 -- Judicial Notice of Adjudicative Facts

- Facts not subject to reasonable dispute:
 - (1) generally known within Ct's territorial jurisdiction; or
 - (2) from sources whose accuracy cannot reasonably be questioned
- Notice:
 - (1) Ct may take judicial notice on its own; or
 - (2) Ct must take judicial notice if a party requests it and Ct is supplied with necessary info
- **Timing:** any stage of the proceeding
- **Opportunity to be heard:** a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed



CONSIDERATIONS

- *"Judges may not independently investigate adjudicative facts — the facts that are at issue in a particular case — unless (in the words of Federal Rule of Evidence 201) they are 'not subject to reasonable dispute' because they are generally known or 'capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.'"*



Elizabeth G. Thornburg, *The Lure of the Internet and the Limits on Judicial Fact Research*, 38 Litig. 41, 43 (2012)



CONSIDERATIONS

- “But they may independently ascertain and use information that meets the requirements of judicial notice, and they may investigate ‘legislative facts’— those that inform the court’s judgment when deciding questions of law or policy — to their hearts’ content, bound by no rules about sources, reliability or notice to the parties. The cross-reference to judicial notice also tends to elide the ethics and evidence rules.”

Elizabeth G. Thornburg, *The Lure of the Internet and the Limits on Judicial Fact Research*, 38 Litig. 41, 43 (2012)



SCENARIO 5

- Plaintiff Inmate diagnosed with GERD receives Zantac only at 9:30 a.m. and 9:30 p.m., not at mealtimes
- Plaintiff sues Defendant prison officials for infliction of physical pain and serious medical harm in violation of VIII Amendment
- Dis Ct grants Defendants summary judgment based on prison doctor's testimony that it doesn't matter what time of day Zantac is administered



SCENARIO 5

- App Ct reverses:
 - Cites Mayo Clinic's and Zantac manufacturer's websites that recommend taking Zantac shortly before meals
 - Finds genuine issue of material fact on whether timing of Zantac doses amounts to deliberate indifference to a serious medical need

DID THE APP CT PROPERLY RELY ON INFORMATION FROM MEDICAL WEBSITES THAT CONFLICTS WITH THE ONLY EXPERT EVIDENCE IN THE RECORD?

YES

NO

Google



YES

Rowe v. Gibson,
798 F.3d 622 (7th Cir. 2015)

- Purpose: to create a genuine issue of material fact
 - **Fed. R. Evid. 201** was not being relied on, internet research was not completely indisputable
 - Ct didn't have to characterize its research as conclusively true because of its purpose

YES

Rowe v. Gibson,
798 F.3d 622 (7th Cir. 2015)

Judge Posner, writing for the majority:

- *“When medical information can be gleaned from the websites of highly reputable medical centers, it is not imperative that it instead be presented by a testifying witness for the purpose of assessing whether a factual dispute exists sufficient to defeat summary judgment.”*

YES

Rowe v. Gibson,
798 F.3d 622 (7th Cir. 2015)

Judge Posner, writing for the majority:

- *“We base this decision on Rowe’s declarations, the timeline of his inability to obtain Zantac, the manifold contradictions in the opposing expert witness opinion, and, last, the cautious, limited Internet research that we have conducted in default of the parties’ having done so.” (emphasis added)*

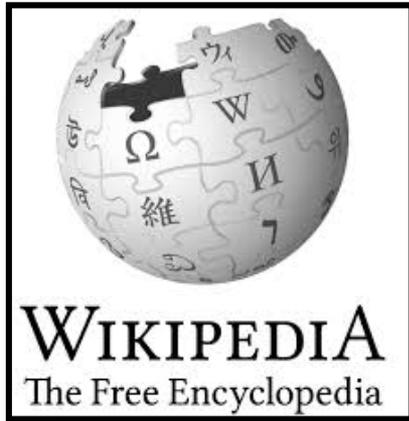
YES

Rowe v. Gibson,
798 F.3d 622 (7th Cir. 2015)

In part-concurrence, part-dissent, Judge Hamilton:

- *“Appellate courts simply do not have a warrant to decide cases based on their own research on adjudicative facts. This case will become Exhibit A in the debate.”*

CONSIDERATIONS



Sylvia Walbolt & Joseph H. Lange, Jr., *Off the Record or Not?*, 90 Fla. Bar J. 10 (Dec. 2016)

- Wikipedia.com is a collaborative effort on the internet that anyone can edit or supplement. It does not carry the same weight as an official governmental website or even the website of a party to the case.
- Nonetheless, the *New York Times* reports that “more than 100 judicial rulings have relied on Wikipedia, beginning in 2004, including 13 from circuit courts of appeal.”

CONSIDERATIONS

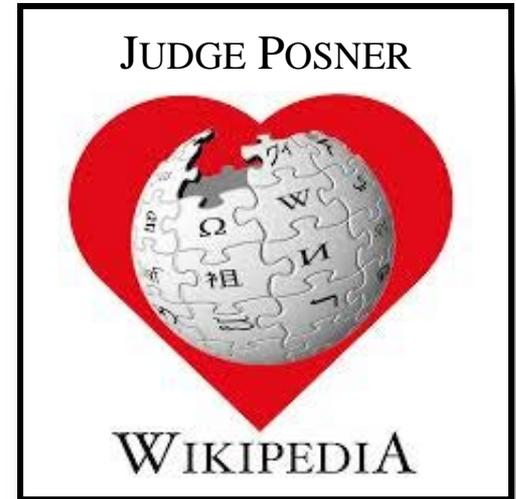
A search of LEXIS revealed that in 2015, Wikipedia was cited in court opinions at least 200 times

- Out of 200, 6 erroneously cited to "wikipedia.com" instead of "wikipedia.org"



CONSIDERATIONS

- 12 cases were from federal circuits
 - 11 from the 7th Cir
 - 7 authored by Judge Posner
 - 2 from Posner panels
 - Other from 1st Cir



CONSIDERATIONS

Where is it going?

LINK ROT



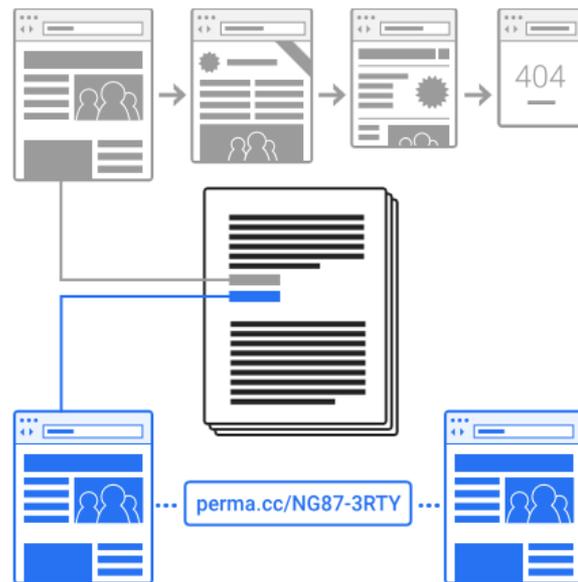
L. Jay Jackson, *"Link Rot" is Degrading Legal Research and Case Cites*, 99 A.B.A. J. 1 (2013).

CONSIDERATIONS

Websites change. Perma Links don't.

Perma.cc helps scholars, journals, courts, and others create permanent records of the web sources they cite.

Perma.cc is simple, free to use, and is built and supported by libraries.



SCENARIO 6

- Defendant was convicted of dealing drugs within “one block” of a park
- Park is across the street from the city block that the prosecution used to measure the distance
- Location of the drug sale was on the far side of the block, and not the side closer to the park



SCENARIO 6

- Defendant argued that “one block from the park” meant length of one side of a city block
- Prosecution argued that entire block was appropriately used to measure the distance, and the fact that the transaction took place on the other side of the rectangular city block from the park still satisfied the statute
- At oral argument, appellate judge distributed copy of MapQuest aerial map to the other appellate judges and the advocates



DID THE APPELLATE JUDGE PROPERLY USE EXTRA RECORD MATERIALS PULLED FROM MAPQUEST?

YES

NO

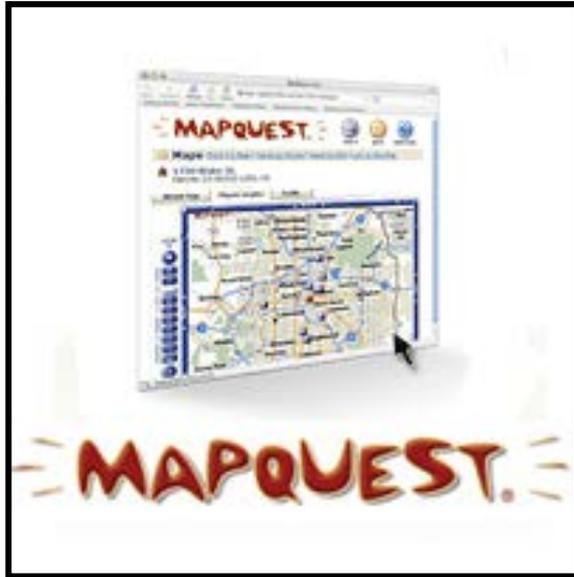




State v. Carufel,
783 N.W.2d 539 (Minn. 2010)

- Neither party objected during or after oral argument
- Ct's opinion contained references to the dictionary definitions of "block" and "city block"
- Ct's opinion did not mention MapQuest map

CONSIDERATIONS



A search of the Lexis Online Legal Database conducted in May 2004 showed that between 2000 and 2004, there were 47 decisions nationwide that cited to MapQuest.

David H. Tenant and Laurie M. Seal, *Judicial Ethics and the Internet: May Judges Search the Internet in Evaluating and Deciding a Case?*, 16 ABA Prof. Lawyer 2, 2 n.12 (2005).

SCENARIO 7

- Defendant was convicted of selling cocaine and appealed, arguing insufficient evidence
- Evidence included text where Defendant referred to “18th Street”
- Prosecution argued “18th Street” was code for street price of \$1,800 based on its claim that there was no “18th Street” in the city
- App Ct affirmed, based in part on its use of city records available on the Internet that showed the former 18th Street had been renamed Dr. Martin Luther King Jr. Drive



DID THE APPELLATE COURT PROPERLY RELY UPON THIS EXTRINSIC INTERNET EVIDENCE?

YES

NO



YES

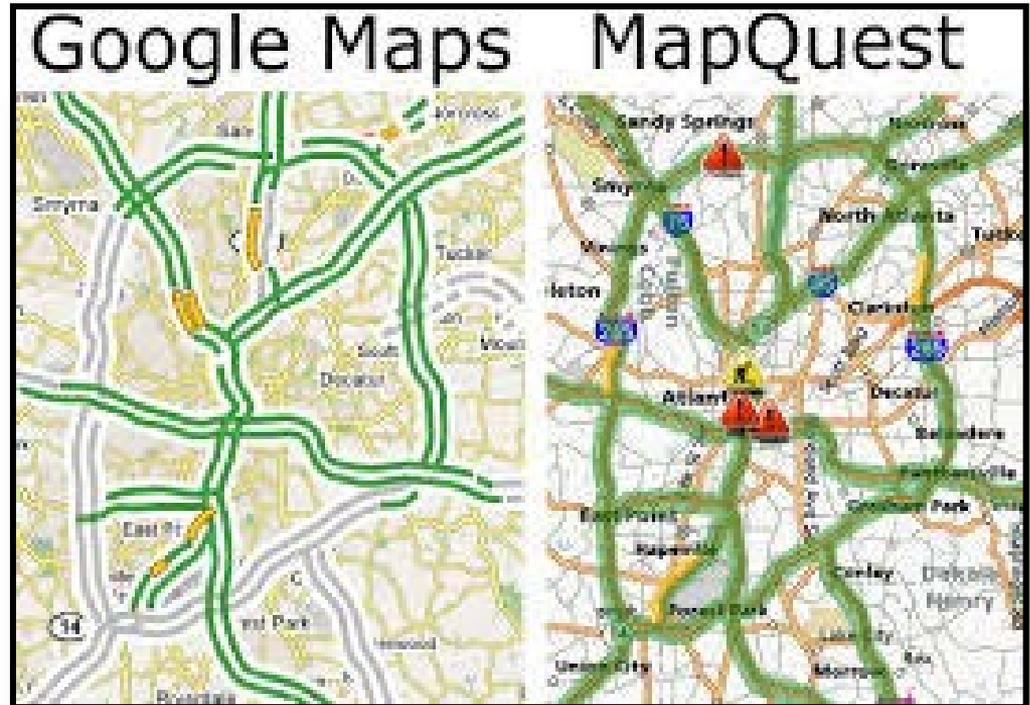
United States v. Harris,
271 F.3d 690 (7th Cir. 2001)

- Dissent pointed out that someone using MapQuest would not find an 18th Street in the city but someone using MapBlast! would

CONSIDERATIONS

A search of LEXIS indicated that in 2015, there were at least 24 decisions nationwide that cited to MapQuest and Google Maps.

Thank you to Geoffrey Kozen, associate at Robins Kaplan, LLP, for doing this research.



SCENARIO 8

- Plaintiffs lessees sued Defendant auto dealership alleging violations of the Credit Repair Organization Act
- Plaintiffs claimed Defendant used interstate commerce to represent that it could assist consumers to improve their credit ratings so that they could buy used cars
- No payment assessed for financing service



SCENARIO 8

- Defendant's advertisements implied that consumers with bad credit would receive a loan and reestablish their credit
- In assessing whether Defendant's conduct fell under the federal statute, Defendant urged the court to examine statements made by the FTC through press releases and other info on FTC website to conclude that conduct of Defendant "fell short" of conduct statute was intended to address



WAS THE EVIDENCE PROPERLY ADMITTED EVEN THOUGH IT WAS NOT SUBMITTED WITH AN AUTHENTICATING AFFIDAVIT?

YES

NO

Excellent
750 - 840



Good
660 - 749



Fair
620 - 659



Poor
340 - 619



PROTECTING AMERICA'S CONSUMERS



YES

Sannes v. Jeff Wyler Chevrolet Inc.,
1999 U.S. Dist. Lexis 21748 (S.D. Ohio Mar. 31, 1999).

- Ct held that FTC press releases that are printed from the FTC's government worldwide web page are self-authenticating official publications under **Fed. R. Evid. 902(5)**

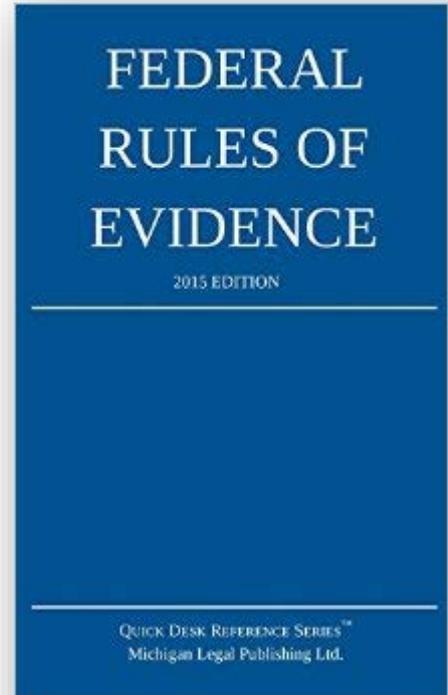
CONSIDERATIONS

Fed. R. Evid. 902(5)

“The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

...

(5) *Official Publications*. A book, pamphlet, or other publication purporting to be issued by a public authority.”



SCENARIO 9

- Defendant was charged with interfering with peace officer in the performance of his duties
- Defendant objected to wearing stun belt while testifying at trial
- App Ct reviewed lower court's decision to require stun belt
- Because question of prejudice was close, App Ct examined magazine and newspaper articles on stun belts



SCENARIO 9

- Based on that review, App Ct listed these grounds for its opinion that there was prejudice:
 - Promotional material from the manufacturer that "*champions the ability of the belt to provide law enforcement with 'total psychological supremacy...of potentially troubling prisoners'*"
 - Statements by trainers employed by the manufacturer that "*at trials, people noticed that the defendant will be watching whoever has the monitor'*"



DID THE APP CT EXCEED THE PROPER BOUNDS OF REVIEW BY SUPPLEMENTING THE RECORD WITH STATEMENTS MADE IN MANUFACTURING LITERATURE AND MARKETING MATERIALS?

YES

NO



NO

People v. Mar,
52 P.3d 95 (Cal. 2002)

- The majority held that there was no problem with its use of internet resources as background materials in reviewing the district court's decision

NO

People v. Mar,
52 P.3d 95 (Cal. 2002)

- But the Dissent notes: "*[O]ne would hope, with the resources available to us, we would find a better means of informing ourselves than relying on such secondary sources as a student comment in a law journal...and a progressive magazine article that bears its heart in its subtitle – 'Stunning Technology: Corrections Cowboys Get a Charge Out of Their New Sci Fi Weaponry.'*"

NO

People v. Mar,
52 P.3d 95 (Cal. 2002)

- Dissent continues: *"We are a court of review. The question for review here is whether the judgment of conviction must be overturned because defendant was required to wear a stun belt, and the answer is, we should have affirmed the judgment because no prejudice was shown. Full stop. The question in this case is not whether stun belts pose serious medical risks for persons with heart problems or other medical conditions, nor was it whether the current design of the stun belt could be improved upon. There is absolutely no evidence in the record bearing on those questions."*

SCENARIO 10

- Sup Ct reviews law restricting sale of violent video games to minors
- Justice Breyer compiles appendix of academic articles addressing whether violent video games cause psychological harm to children
- Justice Breyer cites YouTube video, explaining that filters on video games are easy to evade because it *"takes only a quick search on the internet to find guides on how to circumvent any such technical controls"*
- Much of Justice Breyer's research was not in the record and was not referenced in any of the briefs



WAS THE RESEARCH CONDUCTED BY THE JUSTICE APPROPRIATE?

YES

NO



Violent Video Games Recruit American Youth

William Lucht

An essay in the writings of video games highlights the issue of the nation's addiction to entertainment. The author, William Lucht, writes that the nation's youth are being recruited by the video game industry to play violent video games. The author argues that the video game industry is a multi-billion dollar industry that is recruiting American youth to play violent video games. The author argues that the video game industry is a multi-billion dollar industry that is recruiting American youth to play violent video games. The author argues that the video game industry is a multi-billion dollar industry that is recruiting American youth to play violent video games.



NO

Brown v. Entertainment Merchants Association,
131 S. Ct. 2729 (2011)

- Majority (Scalia, Kennedy, Ginsburg, Sotomayor, Kagan):
 - *"Justice Breyer would hold that California has satisfied strict scrutiny based upon **his own research** into the issue of the harmfulness of violent video games. The vast preponderance of this research is **outside the record**"* (citation omitted) (emphasis added)
 - 1 internet citation: FTC report, available online & in Clerk's file

NO

Brown v. Entertainment Merchants Association,
131 S. Ct. 2729 (2011)

- Justice Breyer, dissent: *"Experts debate the conclusions of all these studies [on the harm from playing violent video games]. Like many, perhaps most, studies of human behavior, each study has its critics, and some of their own in which they reach different conclusions. (I list both sets of research in the appendixes.) I, like most judges, lack the social science expertise to say definitively who is right."*

NO

Brown v. Entertainment Merchants Association,
131 S. Ct. 2729 (2011)

- Justice Breyer, dissent:
 - 2 Appendixes: almost 150 published studies listed
 - 8 internet citations
 - FTC, Census Bureau; YouTube, CNN, medical ass'ns, etc.
 - Link Rot? *"Internet materials ... [are] available in Clerk of Court's case file"*

NO

Brown v. Entertainment Merchants Association,
131 S. Ct. 2729 (2011)

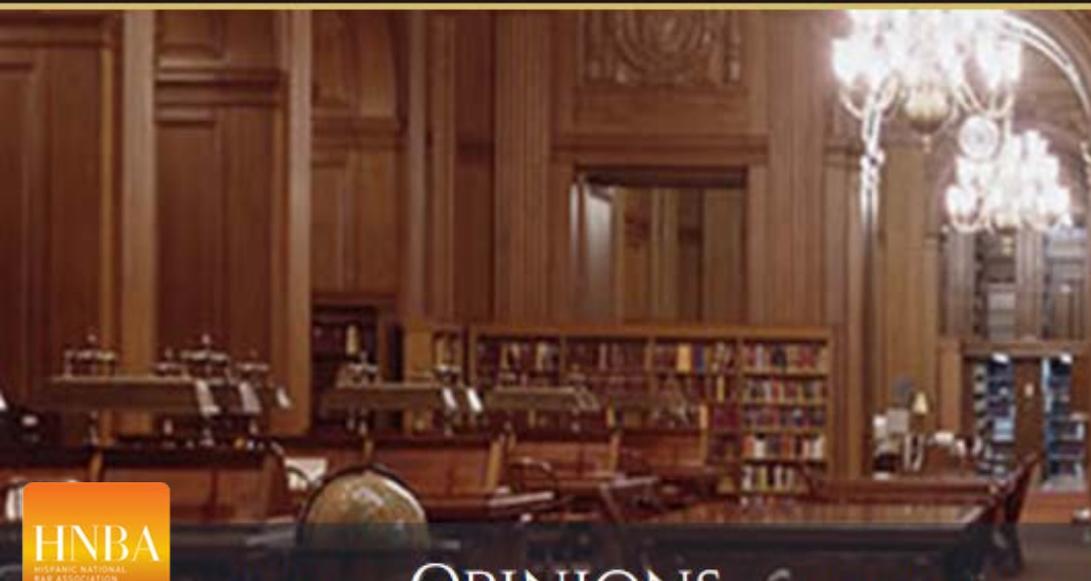
- Concurrence (Alito, with Roberts joining):
 - 15 internet citations:
 - FTC report
 - Videos of sample games
 - Articles from media outlets (CNN, PCMag, Slate.com, Popular Mechanics)
 - Internet materials available in Clerk case file



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- 2016
- 2015
- 2014
- 2013
- 2012
- 2011
- 2010
- 2009
- 2008
- 2007
- 2006
- 2005

Term Year: 2016	
Case Number	Case Name / Cited Material
16-5247	<p>Sireci v. Florida</p> <ul style="list-style-type: none"> http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=PEP_2015_PERPAGESEX&prodType=table; http://www.deathpenaltyinfo.org/documents/FactSheet.pdf; http://www.deathpenaltyinfo.org/execution-list-2016
15-606	<p>Pena-Rodriguez v. Colorado</p> <ul style="list-style-type: none"> http://defendermanuals.sog.unc.edu/race/8-addressing-race-trial
15-8544	<p>Beckles v. United States</p> <ul style="list-style-type: none"> http://www.usssc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2015/Figure6.pdf
15-1251	<p>NLRB v. SW General, Inc</p> <ul style="list-style-type: none"> https://ssrn.com/abstract=2918952
15-866	<p>Star Athletica, L. L. C. v. Varsity Brands, Inc.</p> <ul style="list-style-type: none"> http://www.copyright.gov/comp3/docs/compendium.pdf
15-1256	<p>Nelson v. Colorado</p> <ul style="list-style-type: none"> http://leg.colorado.gov
16-515	<p>Salazar-Limon v. Houston</p> <ul style="list-style-type: none"> https://www.washingtonpost.com/news/the-watch/wp/2014/08/29/when-unarm-ed-men-reach-for-their-walstba... https://www.washingtonpost.com/news/the-watch/wp/2014/08/29/when-unarm-ed-men-reach-for-their-walstba...
16-515	<p>Salazar-Limon v. Houston</p> <ul style="list-style-type: none"> https://www.washingtonpost.com/news/the-watch/wp/2014/08/29/when-unarm-ed-men-reach-for-their-walstba... https://www.washingtonpost.com/news/the-watch/wp/2014/08/29/when-unarm-ed-men-reach-for-their-walstba...
16-254	<p>Water Splash, Inc. v. Menon</p> <ul style="list-style-type: none"> https://travel.state.gov/content/travel/en/legalconsiderations/judicial/service-of-process.html https://treatydatabase.overheid.nl/en/Verdrag/Details/004235_b https://assets.hcch.net/upload/wop/lse_concl_e.pdf https://assets.hcch.net/upload/scrpt89e_20.pdf

CONSIDERATIONS

- *“In appellate courts, independent research crosses another boundary: the case’s trial court record. Normally any introduction of facts into the record occurs at the trial level. The appeal is a structured, stylized review of what happened below, complete with application of the burden of proof and carefully prescribed standards of review. Litigants are generally not allowed to introduce new evidence at the appellate level; an appellate judge who is doing his or her own factual research may be improperly committing the same error.”*



Elizabeth G. Thornburg, *The Lure of the Internet and the Limits on Judicial Fact Research*, 38 Litig. 41 (2012).

TAKEAWAYS?

- Government websites generally accepted
- Non-government sites less clear
 - Geographic-based sites generally accepted
 - GoogleMaps, MapQuest, etc
 - Open-source sites often criticized
 - Though also often accepted:
 - Wikipedia



JUDICIAL STANDARDS TO CONSIDER?

Standards for court's consideration of an extra-record source of facts not cited in the briefs:

1. Courts should expressly state facts it is judicially noticing; &
2. Courts should attach all such sources as appendices to any opinion citing them



Sylvia Walbolt & Joseph H. Lange, Jr.,
Off the Record or Not?, 90 Fla. Bar J.
10 (Dec. 2016)

FINAL THOUGHTS

“Google can bring you back 100,000 answers. A librarian can bring you back the right one.” — Neil Gaiman, Goodreads Author

“With a library it is easier to hope for serendipity than to look for a precise answer.” — Lemony Snicket, When Did You See Her Last?

“People who seek answers are often not looking for truth.” — Jonathan Renshaw, Dawn of Wonder

