

2015

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Recommended Citation

Mary Whisner, *Not What I Planned (A Writing Detour)*, 107 LAW LIBR. J. 319 (2015), <https://digitalcommons.law.uw.edu/librarians-articles/15>

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Not What I Planned (A Writing Detour)*

Mary Whisner**

Ms. Whisner reflects on the busy lives of law librarians and why sometimes the demands of reference work may keep law librarians from completing planned writing projects in a timely manner.

¶1 When a state court law clerk asked about citing an unpublished federal district court opinion, I got interested in looking beyond the immediate question. How often do state courts cite unpublished opinions—from their own state courts or elsewhere? When they cite these cases, had the parties cited them first? What are state court rules about parties citing unpublished opinions? How does this fit with the courts’ other use of other nonbinding materials, such as cases from other states or secondary sources?

¶2 I thought these questions could lead to an interesting “Practicing Reference” column, and I began researching. I took notes and created folders of saved cases. But I didn’t get far enough in the research to organize it and write something. And I realized I wouldn’t be able to do so in time for this issue of *LLJ*. So I’ll set that topic aside for now and instead reflect on what might keep a reference librarian (specifically me) from completing work on an interesting project like this as quickly as she (I) hoped.

Commitment to Service

¶3 Libraries routinely advertise for applicants who are “service oriented” or have “a commitment to service.” I think these are more than pat phrases. Sure there are exceptions, but generally we librarians do feel committed to service. And each librarian’s personal commitment is shaped and reinforced by the commitment exhibited by our coworkers and administrators. As social beings, we want to fit in, which—in many libraries—means caring (as our colleagues do) that our patrons get what they need. There are some libraries with a different overall culture or with employees who are not eager to serve (whether from poor training, distraction, burnout, disaffection, hostility, or laziness), but I don’t know enough about them to say more.

* © Mary Whisner, 2015. I am grateful to Anna Endter, Grace Feldman, Peggy Jarrett, Nancy Unger, and Alena Wolotira, who took time from their own busy days to provide me with helpful comments on a draft.

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¶4 When librarians are committed to serving their patrons, they often have plenty to do without tackling any elective projects. People stop by the reference desk: they need help. Faculty members ask questions that might take hours to research. Journal students ask for consultations. Some librarians are needed in the classroom. Some work on SSRN or institutional repositories or library websites. A commitment to service means saying yes to the various requests (or as many as can be handled) and trying to do a pretty good job with them. One's own projects get moved to the side.

¶5 I feel privileged to have the work I'm obligated to do as part of my job be so interesting and rewarding. I don't feel that it's stealing time away from my own, more interesting work.¹ I care about the quotation Professor F. wants to track down or the material a graduate student wants to find for her paper—at least for the time I'm working on those tasks.

Not Direct Service, but Part of the Package

¶6 Only some of my work time is devoted to direct service, such as answering a question or speaking to a class. But even activities that do not constitute direct service can be part of the fabric of service. For example, when I attend a faculty colloquium, I'm not directly serving anyone, but I am learning about a legal topic and developing or nurturing relationships with faculty members. Similarly, when I go to various lectures, panels, receptions, moot court competitions, and banquets, it's not direct service, but such participation helps me be a part of the law school so that I can serve it better.² I learn about issues of interest to the community (whether the law school community, the city, or beyond), and therefore questions that might come up.³ My presence reminds students, faculty, staff, and alumni that librarians understand the work they do and might be worth consulting.⁴ Occasionally I can answer a question on the spot or suggest a way to approach a research problem.

¶7 One afternoon when I could have been researching state courts' use of non-precedential opinions, I wrote a script for the annual law library skit in the Student

1. One hears of professors who consider their scholarship to be their "real" work, while teaching and institutional service are mere annoyances. I hope they are rare. I'm more sympathetic to the professors who say, "I love teaching. I'd teach for free—but they'd have to pay me to grade exams."

2. A large, busy law school might offer so many events that a librarian couldn't go to them all and still have time to provide much service to speak of. As was inscribed on the temple of Apollo at Delphi, "Nothing in excess." OXFORD ESSENTIAL QUOTATIONS (Susan Ratcliffe ed., 2d ed. online 2014); see also *Proverbs*, in OXFORD DICTIONARY OF QUOTATIONS (Elizabeth Knowles ed., 8th ed. online 2014) ("Moderation in all things.") (no. 617 on list).

3. This also helps me think of better examples when I speak to classes or talk to students about their paper topics.

4. One challenge in providing reference service is that some people who could benefit from our service don't seem to realize that we could help. See Mary Whisner, *On Asking for Help*, 92 LAW LIBR. J. 377, 2000 LAW LIBR. J. 32 (discussing patrons who could use a reference librarian's help but do not ask for it); Mary Whisner, *The Pajama Way of Research*, 99 LAW LIBR. J. 847, 848–49, 2007 LAW LIBR. J. 51, ¶¶ 8–9 (discussing challenge of making students who do their research at home aware of reference service).

Bar Association's variety show, *Law Revue*.⁵ Over the years, our skits have included an infomercial "selling" the CRS annotated Constitution,⁶ a crime drama parody, a *Sesame Street* take-off, a reenactment of *Pierson v. Post*,⁷ and even interpretive dance.⁸ This year Penny Hazelton and I did a variant of Abbott and Costello's classic "Who's on First?" routine. Instead of naming ballplayers, Penny was trying to dictate a list of guest speakers for her syllabus, and I was getting horribly confused.⁹ We're not in any danger of being discovered and whisked away to the professional stage, but I think the students appreciate it that we show up, abandon our dignity, and try to entertain them. I don't have any metrics to show an increase in student goodwill toward the library based on our thespian efforts, but I think there's a benefit. We foster solidarity, making us more approachable during students' subsequent visits to the library. Creating and performing a skit is both fun and a bonus.

¶8 Professional development activities and professional reading are also not direct service, but they enable and enrich service. An hour with our Westlaw representative, learning about new features in WestlawNext, does not directly serve our patrons, but developing my skills enables me to serve them later, either when I use the system myself or I instruct them on how to use it. Not every news item or blog post I skim is worth sharing with a faculty member, but getting to the good ones is worthwhile. After I send "FYI" messages to different faculty—this one to the ethics folks, that one to the IP folks—it's rewarding to get a note back that some item will be helpful for a project the professor is currently working on that I hadn't known about.¹⁰

5. I always call it a variety show rather than a talent show to reassure myself and others that we don't need talent to put on a library skit. (Many of the student acts do display talent.)

6. THE CONSTITUTION OF THE UNITED STATES OF AMERICA: ANALYSIS AND INTERPRETATION (Kenneth R. Thomas et al. eds., Centennial ed. 2014). (I'm citing the current edition, even though the skit was a few years ago. No one could read the bibliographic details from the audience anyway.)

7. *Pierson v. Post*, 3 Cai. 175 (N.Y. Sup. Ct. 1805). For the story behind the case, see Bethany R. Berger, *It's Not About the Fox: The Untold History of Pierson v. Post*, 55 DUKE L.J. 1089 (2006).

8. Cast members have generally included Penny Hazelton, Cheryl Nyberg, Nancy McMurrer (now retired), and me, as well as occasional brave law librarianship students.

9. Washington Supreme Court Justice Mary Yu's name was easy to work in, with lines like these:

"The next speaker is?"

"Yu."

"Me?"

"Justice Yu."

"Just as I do what?"

I was also pleased with this exchange:

"What's next?"

"Yes, that's right."

"Whaddaya mean?"

"That's right: Watts next."

"That's what I'm asking: *what's next?*"

"Professor Kathryn Watts."

10. Some current awareness service feels more like leisure than work, and indeed it takes place outside work hours. I often make notes about NPR stories I hear in the car for sharing later.

Walking, Napping, Reading, Streaming

¶9 Few people work all the time, and those who do are labeled with a pathology: workaholism. I don't think I have to work every day, and I enjoy my weekends. But weekends are also a time when I can sometimes make headway on my own research and writing projects. That's the best way to get them done, given the range of stuff I'm doing at work, and that's fine with me.

¶10 And yet sometimes I have a Saturday that would be very well suited to a sustained research project—I have no deadlines at work, my spouse is busy in her own office, and there's nothing to keep me from firing up my computer and running some searches—but I'm just not in the mood. I figure that it's good for me as well as for the dog to take a nice long walk at the off-leash park. Afterward, I'm just tired and chilled enough that a nap appeals to me. When I wake up, I'd much rather read a book than work on my research project. Soon it's time for dinner. And, after dinner, isn't it pleasant to lie on the couch with a blanket and stream videos on the television? After a day like that, I can (and often do) charge myself with laziness. But even though I really do want to work on my project, days like that figure into a balanced life. I may chide myself about sloth, but if my energy is low or my mood is droopy, forcing myself to work might not be very productive in any event. There might be a good reason to take a break.¹¹

What's My Point?

¶11 All of us lead busy lives, at work and elsewhere. The very things I love about reference—varied questions from diverse patrons, an ongoing need to keep learning, the potential to have a new question walk in the door (or appear in the inbox) at any time—can keep me from something else I enjoy: researching an interesting topic and writing about what I find.

¶12 I'm sure this is the case for many librarians.¹² Some authors face external deadlines—for a class, a call for papers, or a tenure application. Others can choose

11. The incredibly hard-working and productive Louis D. Brandeis knew this:

Brandeis learned a lesson that he would practice and preach to others all his life, namely, that unless one found some way to exercise the body as well as the mind, one could not do good work. As a young lawyer he belonged to a riding club, and later took up canoeing. He also took regular vacations, and all of August off. "I learned that I could do a year's worth of work in eleven months, but not in twelve." Brandeis's insistence on taking time off involved not just health; he understood that a tired person more easily made mistakes, not just of fact but of judgment as well.

MELVIN I. UROFSKY, *LOUIS D. BRANDEIS: A LIFE* 34 (2009). Like me, Brandeis enjoyed walking the family dog. After one walk, he told his wife "that while the dog had behaved reasonably well, he 'has occasional lapses from virtue which convince me he should be muzzled. He does bite sometimes & we shall have claims made against us if we don't act soon.'" *Id.* at 361. Although Brandeis's brilliance, commitment, and productivity are far beyond me, I'm proud that our dog is more peaceable than his and has never bitten anyone. Still, she's hardly toothless: she eviscerates plush animals and she chewed my laptop's power cord.

12. For that matter, it's probably true for anyone with a day job who wants to make progress on another project, whether it's writing, music, art, or triathlons. This is a column for *Law Library Journal*, so I'm talking about librarians. But let me note a problem faced by prospective law teachers: Law schools prefer to hire entry-level faculty who have already published, but how can a busy young lawyer who is committed to client service fit in writing for publication?

their own deadlines, perhaps chipping away at a project until it feels done. This isn't always a plus because a back-burner project might never be completed. And even without a due date, the project may invisibly bear a "best if used by" stamp: the law or the technology may change so much that the paper would be stale if published beyond that date.

¶13 I'm lucky. In this instance, I had a commitment to write something related to practicing reference, not a paper on the use of nonprecedential decisions. So when I realized I couldn't complete my research satisfactorily, I could change to a low-research topic—that is, why I didn't complete my research. Reflecting on some of the things that kept me from the more challenging project—providing top-notch reference service, participating in law school events, taking a nap—has illustrated the work and nonwork life of a reference librarian in the early twenty-first century. Perhaps some of you readers have occasionally had trouble completing writing projects and can take heart from my example.¹³ Doing our core jobs has to be a priority. And life has to have room for walks and naps, too. I'll get back to my project one day, and you'll also get yours done, so be confident and give yourself permission to enjoy some time away. And if you come across interesting cases or articles about state courts' use of either unpublished opinions or cases from other states,¹⁴ let me know.

Some predictors of success in scholarship or the classroom . . . may exclude groups that are important to legal education. Preliminary analyses suggest that professors who practiced law before entering teaching published fewer articles before hiring than did professors without practice experience. Lawyers who practiced with law firms or corporations may also have published less than those who practiced with government agencies or public interest groups. Relying too heavily on pre-hiring publications, therefore, might exclude practitioners—or lawyers with particular types of practice experience—from faculties. Similar effects could occur for women and minorities, some of whom may fail to publish as many articles as white men at a young age because of family responsibilities, lack of mentoring, and other constraints.

Deborah Jones Merritt, *Research and Teaching on Law Faculties: An Empirical Exploration*, 73 CHI.-KENT L. REV. 765, 818 n.133 (1998).

13. Or maybe you always complete your projects. Good for you. Just don't gloat.

14. In addition to Kevin Bennardo, *Testing the Geographical Proximity Hypothesis: An Empirical Study of Citations to Nonbinding Precedents by Indiana Appellate Courts*, 90 NOTRE DAME L. REV. ONLINE 125 (2015), which I recently came across and found very interesting.