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On Not Doing Research*

Mary Whisner**

Even though her usual business is “looking up,” Ms. Whisner explores a variety of situations in which it is professionally appropriate not to engage in research.

¶1 Of course research¹ is important. We’re reference librarians. We research, we help others research, we teach people how to research, we get our libraries to acquire sources that will facilitate research. Researching is rewarding. Researching is fun. Careful, thorough research can make the difference between a winning case and a debacle, between a superlative seminar paper and an academic flop.

¶2 And yet I’ve been thinking about *not* doing research. What brought this up? First was planning an essay for this column. My last piece² was a research feast. I looked up this and that and something else. I followed tangents. I footnoted everything. The research intensity had advantages and disadvantages. Advantages: I had fun, I found some things I thought were interesting, and I created (I think) a piece that could be interesting and useful for others. Disadvantages: it ate up a lot of my time, the footnotes ate up a lot of my editor’s time too, and the whole thing sprawled over too many pages. So to avoid the disadvantages—giving a break to myself, my editor, and you, my readers—I resolved that this installment of “Practicing Reference” would use much less research. In fact, I decided to write it with no research at all.

¶3 Not doing research came up in a second, very different context. I met a young lawyer³ who works in the Special Assault Unit of the King County Prosecutor’s Office. He seemed competent, conscientious, and knowledgeable. Since research

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1. Throughout this piece, I use “research” to refer to book and database research—not fieldwork, laboratory experiments, case investigation, etc. Maybe you would have assumed that, but I thought I’d make it explicit.

2. Mary Whisner, *What’s in a Statute Name?* 97 LAW LIBR. J. 169, 2005 LAW LIBR. J. 9.

3. More and more of them seem “young” these days. This one was admitted to the bar in 1999.

is my life,⁴ I wondered about the legal research needs of his practice. It seemed very likely that he could do his job quite well with very little research. He needs to *know*—not research fresh for each case—the sex offense and child abuse statutes and the rules of evidence and criminal procedure of Washington State. A lawyer with a varied practice would have to look up the elements necessary to prove rape in the second degree and the sentence a defendant faces if convicted, but the prosecutor must be familiar with the law. (If the legislature were to change the sex offense statutes significantly, I imagine the prosecutor’s office would have in-house training to acquaint everyone with the new provisions.) Even though there are always new cases interpreting the rules of evidence, trial lawyers need to know the rules and be able to recall them quickly. If a lawyer needed to do research before making an objection during trial, well, he wouldn’t ever make an objection. So this lawyer probably does not do much research. (I mean, of course, legal research—the sort of research that uses books and databases. If we used the word “research” to include interviewing witnesses, talking to detectives, and reading case files, then the prosecutor probably does a great deal.)

¶4 This is my starting point: two examples of legal professionals not doing legal research—the prosecutor and me. I’ll explore a few variations on the theme and describe some categories of not doing research. Throughout, I will focus on responsible, competent professionals who are doing a good job when not doing research. There are, of course, examples of the opposite—people who mess up by failing to do research⁵—but they are not the subject of this piece.

Project-based Nonresearch

¶5 My not doing research for this essay illustrates Project-based Nonresearch (PBNR). I research frequently and have no plans to swear off it generally,⁶ but I have decided that this is a project where I can do without. It is appropriate for this particular project because my task—to write a few pages about some aspect of practicing reference—is one that can be accomplished without research. Sometimes that task requires it (or at least benefits from it), but the assignment is flexible enough that it can include an essay that is reflective rather than grounded in research. Moreover, I have been a reference librarian long enough that I can come up with a few pages of material from what I already know.

¶6 I am not alone in having an occasion for PBNR. In fact, I think almost everyone whose professional life includes legal research should occasionally engage in PBNR. For example, an experienced estate planning lawyer meets

4. Speaking loosely, of course. I do have other stuff going on.

5. See, e.g., Mary Whisner, *When Judges Scold Lawyers*, 96 LAW LIBR. J. 557, 2004 LAW LIBR. J. 34 (citing cases in which judges scold lawyers for failing to do proper research). (This footnote does not mean that I have broken my resolution not to do research for this piece. I had the citation handy.)

6. I wonder what my director would have to say to me if I did make such an announcement.

a client with a modest estate (well below the estate tax threshold, if any) who wants to leave everything to the local public library. How much research is appropriate for this project? Probably none—because the lawyer knows the basic requisites of a will in his or her state and this estate plan is very simple. Likewise consider the experienced personal injury attorney whose client was hurt when his car was rear-ended at a stop light. The attorney knows the basic liability rules and can probably move fairly quickly to negotiating with the other driver's insurance company.

¶7 Suppose a law professor is preparing a talk for first-year orientation about the case method and how law school classes differ from what students have experienced in history, political science, or geology. Certainly it would be possible for the professor to research the history of legal education, but that probably isn't necessary to prepare for this talk. The professor should already know enough. This is a good time for PBNR.

¶8 Professors also have PBNR opportunities when they are dealing with law that is familiar to them (much like the estate planning attorney). A student asks a question that is a little off the day's topic and was not covered in the reading—if the professor knows the area, why not answer without research? A reporter calls and asks for a comment on a case in the news—maybe the professor can say something about the legal context that is helpful without having to look up the applicable law.⁷ The professor can always couch the reply in cautious terms—"generally," "it appears that," "considering the facts you have described," and so on.

¶9 Law students and young lawyers do not have the secure body of knowledge that experienced attorneys and professors generally have. But they face significant projects where research is proscribed. I refer, of course, to exams—closed-book law school exams and the bar exam. If you think of the "project" as the exam itself, then they are expected to produce their work with no research at all, based only on what they already know. If you could also define the "project" to include the preparation period, then research is possible but, for most students, it will be slight—they focus on the materials they are given (casebooks and bar review materials), in combination perhaps with some study aids and their own outlines, notes, or flashcards. Exams, although they are enforced PBNR and not PBNR by choice, still have some things in common with the other examples. The product does not require research and draws only on what the actor already knows. Like the professor commenting off-the-cuff to a reporter, the test-takers might frame some answers cautiously and suggest areas where research might be needed to answer more definitively.

7. Of course, depending on the issues, many professors will want to know more before commenting—for instance, some of our faculty members eagerly read Supreme Court cases as soon as they are handed down so that they will be prepared for such questions.

Role-based Nonresearch

¶10 Recently an older patron⁸ announced to the intern I was working with, Shannon Malcolm, that he had forgotten how to shepardize or use KeyCite. Shannon said, helpfully, “Then you’d like me to show you how? I’ll be happy to do that.” The patron gruffly replied, “Well, I’d *like* you to do it for me.” Shannon cheerfully and pleasantly came back: “Let me sign you on to KeyCite and I’ll walk you through it.” I was very pleased to see Shannon not doing research and not doing it so well. Why? Because that’s what his role called for—that is, he was practicing Role-based Nonresearch (RBNR). If a professor wanted citations checked, Shannon’s role would be to do it. When Shannon is writing a paper of his own, his role includes checking his citations. But for this outside patron, Shannon’s role as a reference librarian was to help the patron, giving him the skills to do his own research. Of course, the line might be thin: by the time Shannon told the patron, “Click here . . . type your citation here . . . click here . . . look at the list of citing references,” and so on, it could look as if Shannon was doing research. But research—even something as simple as using KeyCite—involves judgment. Having the patron at the keyboard emphasized that the patron was responsible for his own research, including all the judgments about which of his cases to check, which editorial signals to watch for, and which citing references to follow up. And, of course, we hope that after Shannon walked him through the process once or twice, the patron would be able to do it on his own later.

¶11 RBNR is not limited to reference work. For instance, if a student developing a paper topic asks a professor for advice, the professor can spin out some ideas and suggest some cases and statutes that might be relevant without looking them up for the student. It’s the student’s paper, so chasing down the references is the student’s job. If an acquaintance corners an attorney at a party and asks about legal remedies for dealing with a neighbor’s horribly encroaching English ivy, it is appropriate for the attorney, in the role of partygoer, not to do research. The attorney might say something off-the-cuff, but there is no need to dig in and get entangled in this case (or the vines).

Day-to-Day Nonresearch

¶12 Although the prosecutor I describe does not do much research in his day-to-day work, he has the skills and resources to do it when the need arises. For instance, if there is a piece of evidence that the defense will try to exclude in a motion in limine, then he would want to go into the pretrial hearing armed with appropriate authority. Or if there is a tricky statute of limitations question that could preclude

8. Just as more lawyers seem “young,” fewer patrons seem “older.” This one, an attorney I believe, was at least sixty. That puts him in a good demographic for feeling uncomfortable with computers and comfortable expecting service.

bringing a case, he would research that. But he might go days or weeks at a time with little or no research. So he engages in Day-to-Day Nonresearch (DDNR).⁹

¶13 I would like to know more types of practice characterized by DDNR. For one thing, I think it would be helpful information for law students' career planning. Some law students just don't care for research, and it would be good for them to know about fields where they can master a limited body of law and develop some skills and then do their jobs—good, rewarding, socially important work, too, like the prosecutor's work.

¶14 It's a commonplace that senior partners often don't do much research—not only do they know their fields, but they have associates to do research for them. But senior partner isn't a realistic DDNR job for a law student. And the path to senior partner includes years of being an associate, with potentially a much *higher* than average research burden.

¶15 My own job experience is of little help in advising research-averse students. Of course, reference librarian—my longest-held job (and my calling)—is at the other end of the spectrum from a DDNR job. But my limited legal experience—summer associate, judicial clerk, appellate attorney—before I became a librarian also had research as a core part of the job. I could tell students who dislike research not to seek out jobs like those, but where *should* they look? Perhaps I'll make a list one day.

¶16 Recall that I want to focus on competent, responsible professionals not doing research. Being in a DDNR job does not mean that attorneys do not need to know something about research. They need to be able to spot the issues that require research and know how to find the primary and secondary authority that will enable them to advise their clients, draft effective documents, or make good arguments in court. If they cannot do the research well themselves (or prefer not to), they should still be able to spot the issue and then get help with the research—from a librarian, a subordinate, or a colleague.¹⁰ So even though I would like to recommend DDNR jobs to law students who don't like research, I still think they need to learn how to do it.

Less Than Complete Research

¶17 Another form of not doing research actually involves doing *some* research—just not as much as one might have done. Suppose you want a general idea of intellectual property in Russia (say, to make a tangential point in a class that is

9. In their careers, lawyers can have some periods of DDNR and some periods where they are always at the keyboard or buried in books. In fact, this young lawyer worked for some time in the King County Prosecutor's Appellate Unit, where he no doubt did much more research, day-to-day, than he does as a trial attorney in the Special Assault Unit.

10. Some researchers are reluctant to ask for help or do not know that they need it. See generally Mary Whisner, *On Asking for Help*, 92 LAW LIBR. J. 377, 378–79, 2000 LAW LIBR. J. 32, ¶¶ 4–9.

about United States and European Union law). You turn to Martindale-Hubbell's *International Law Digest* and skim the entry. You might well decide that's enough for your purpose; you don't go on to look for the statutes (even in translation) or treatises on the topic. You have done Less Than Complete Research (LTCR), but that is what is appropriate to your project.

¶18 Every project has to end sometime. And yet, with the plethora of information sources available, there is almost always more that one could do. Did you use the annotations in *United States Code Service*? Why not go through all of the annotations in *United States Code Annotated* as well? Did you read the cases from your circuit? Why not cases from all circuits? How about all the cases they cite and all the cases that cite them? Did you look for law review articles? Why not articles from other fields? And on and on.

¶19 Research could go on—but the clients can't afford to have their lawyers explore every byway. Even without the billable hour as a concern, every researcher needs to find a time to stop. The student's paper has a due date; the professor wants to send off an article manuscript by the start of the semester; everyone simply has other work to do. Not to mention the rest of our lives.

¶20 So LTCR is common and even necessary. Knowing *how much* less than "complete" research is appropriate for a given project requires considerable professional judgment. We seldom do all we possibly could, but do we stop here? or here? or here? Stop too soon and you miss something important—and give bad advice or lose a case. Stop too late and you waste time and money.

¶21 Developing a sense of when to stop requires some familiarity with how much is possible. When learning to do research, it is often helpful to do what would be too much for someone with more experience—for instance, checking *American Jurisprudence 2d* and *Corpus Juris Secundum* and a hornbook. That is how researchers can learn the sorts of sources that are likely to have overlapping coverage. With more experience, they will be able to make informed choices. Is this a project that requires the extra thoroughness achieved by checking additional sources? Or is the marginal gain likely to be too slight for the time invested?

¶22 If I am looking for cases and I run a couple of searches in an appropriate database—possibly trying more than one online system—I often feel confident that I have found a good sample of what's out there on the topic. A novice researcher might *feel* just as confident, but is the confidence well founded? It would be advisable for the novice to try more searches and other sources as a check against the chance that the searches were less effective than assumed.

Concluding Words

¶23 Research is central to our work. And yet there are a variety of situations that call for *not* doing research. Project-based Nonresearch (PBNR) involves not doing research for some discrete project. It is only appropriate when the project can be

completed well without research—and that depends both on the project and on the actor’s base knowledge. Some projects are better candidates for PBNR than others, but even an expert can’t do every project without research. Role-based Nonresearch (RBNR) is appropriate when a project requires research, but it is someone else’s job to do it. For instance, a reference librarian does not do research for all patrons, a professor does not do research for students, and judges do not do research for the attorneys appearing before them. Day-to-Day Nonresearch (DDNR) is the ordinary approach of an attorney who is familiar enough with a body of law to apply it to the routine cases that come up. Attorneys who engage in DDNR must always be alert, however, to the cases that are *not* routine and raise issues that should be researched. And, finally, Less Than Complete Research (LTCR) is, in a sense, most of our research. The “not doing research” here is in all the sources we don’t check, the databases we don’t search, the search terms we don’t try. With LTCR we must gauge how much less than complete is appropriate for the project, the client, and our time.

¶24 Our business is looking up. But sometimes it’s appropriate *not* to look up anything.

