

Practicing Reference. . . .

Seeking Inspiration*

Mary Whisner**

Who hasn't struggled to come up with an idea for a paper, or even a Law Library Journal column? Ms. Whisner discusses various ways we can help our students and ourselves find that elusive topic.

¶1 As the days passed, bringing nearer my deadline for submitting this column, my thoughts occasionally turned toward the task of writing one. But I didn't have a topic, so I couldn't get very far. No research, no outlining, no sketching out notes, and certainly no drafting. I didn't panic, because a topic always seems to appear somehow, but I did wonder what it would be. And that deadline did keep getting closer.

¶2 Then I had my inspiration: my very "topiclessness" could be my topic. Not because my own casting about for ideas is so interesting in itself, but because this condition of Deadline plus No Topic is one that our students face regularly. Thinking about my experience might allow me to think about theirs as well, and possibly say something helpful to reference librarians who assist them.

¶3 Although I've only worked in an academic law library, in this column I usually try to show commonalities among the different law library settings—for instance, drawing parallels between a law school library's services to faculty, a court library's services for judges, and a law firm library's services for attorneys. But in this case, the topic really is much more typical in academic settings than elsewhere. Judges and law clerks don't have to come up with a topic for opinions: the topic is determined by the dispute before the court. And practicing attorneys also have their topics handed to them—they need to write briefs, memoranda, opinion letters, or whatever to address their clients' needs. Of course, judges and attorneys sometimes do develop their own topics—when they give speeches, when they write articles for bar journals or law reviews, and even when they write blogs. Those situations are more discretionary, though, and are not at the core of their work. In contrast, almost every law student has to find a topic for a paper, note, comment, or article, at least once.

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¶4 My writing timelines are similar to law students'. I have a column due every three months, about the time a student has between a semester starting and the final paper coming due. Fortunately, our deadlines usually aren't "drop-dead deadlines." If I'm stuck, I can, as I did this time around, ask the editor for an extension, and students often can negotiate extensions with their professors. But extensions have costs: for me, they make the next deadline come more quickly; for students, extensions make the next semester worse because they are finishing up the last semester's paper while trying to get going with new courses.

¶5 Like students, I'm trying to think of a topic (and then work on my writing) while managing a bunch of other assignments. Students in a seminar, for instance, are still doing the reading for the seminar while thinking about their papers, and they are also studying for two or three other classes, working or looking for summer jobs, participating in extracurricular activities, and so on.

¶6 Having a lot going on can be both good and bad for finding a topic. The good news is that the other activities can spark an idea. For me, it's obvious: I'm supposed to write something about practicing reference, so doing the day-to-day work of a reference librarian is exactly what I need to do to think of something interesting to say about reference. It can work for students, too. The student in a health law seminar needs to think of a topic related to health law, so doing the reading for the seminar will help expose him or her to the field. The law review student has a broader range of potential topics,¹ but still needs inspiration. Either student might come across something in a class or on the job that seems worth writing about.

¶7 The bad news about having a lot going on is that one can get distracted. Particularly if it's proving a little hard to come up with a topic and one doesn't really know what to do about that writing assignment, it can be much more satisfying to devote attention to other tasks. And if the other tasks are things that count as working or studying, then so much the better—you don't feel like you're procrastinating. (Not that I'm above a few rounds of Spider Solitaire when I can't think of what to write.)

¶8 Well, sooner or later, we—the students and I—need to come up with topics. It's best if we find topics we are interested in. Writing is bother enough when you're interested, so there's no use making it harder by taking on a topic that bores you from the start. My task is easier because my assignment is to write something fairly short, and I am very familiar with my general subject area. Students, on the other hand, are assigned to write seminar papers or law review notes or comments that are several times longer than my essays. And the students are only just starting to learn their fields. Many journal students have to find topics even before they

1. A law review student might have other constraints—for instance, needing to focus on one state or comment on a recent case. Students for specialty journals, of course, have general topical areas: environmental law, gender and the law, international law, etc.

start their second year of law school. Students in seminars might have had only the briefest introductions to their subjects by the time they're supposed to turn in topic proposals. What are they to do?

¶9 It turns out that we librarians can help them by sharing some research skills. A couple of years ago, a professor asked a librarian to come to class twice: once to talk about ways to find topics and once a little later to help the students after they had chosen topics. We had often done the second talk, but the first was new for us. We've since done this again in other seminars, and the students have reported that it's been helpful.²

¶10 First, I think many students can benefit from a little reflection about wisps of topics they already have floating around in their minds. Everyone is interested in something, and it might be possible to spin that interest into something suitable for a law school paper. I sometimes ask them to think about why they were interested in law (creative business deals, protection of the environment, promotion of civil rights), what they did in their summer job or externship that seemed interesting, what appealed to them about this seminar. (They don't have to reveal these things in front of the class. That might be a little intrusive.) Students who thought they had *no* idea of what they wanted to write on can come to see possibilities: "I majored in computer science, and I'd like to figure out a paper topic related to the software industry"; "I signed up for the Law and Medicine seminar because of my experience with a relative who suffered a brain injury in an accident—I wonder if I can figure out a topic about surrogate decision-making or rehabilitation or maybe special needs trusts"; "I love *The Wire* on HBO, and I'd like to know more about the law around electronic surveillance." Maybe these early ideas won't pan out, but it's better to start with something other than the bewildered plaint, "I have to write a paper, and I have no idea what to write about."

¶11 Once students have identified a general area of interest, we can talk about current awareness tools that will help them scan for new developments or unresolved issues. Something that's well settled doesn't need anyone to write a law review note: there's probably a nice statement of the principle (along with a string of citations) in C.J.S. or Am. Jur. 2d. What students need for a paper is a question that's open—perhaps a federal issue where two or more circuits have come to conflicting results (a "circuit split"), a common law topic where state courts disagree, or a statutory provision that hasn't yet been interpreted by the courts. Few of the students have heard of legal newsletters, and I like to show them some. It's helpful both to browse recent issues and to run searches. For instance, in *United States Law Week* on BNA, one can search for

2. The students have also had a text book containing some discussion of topic selection. EUGENE VOLOKH, *ACADEMIC LEGAL WRITING* 12–14, 86–87 (3d ed. 2007). See also ELIZABETH FAJANS & MARY R. FALK, *SCHOLARLY WRITING FOR LAW STUDENTS* 14 (3d ed. 2005) (Chapter Two: Inspiration: Choosing a Subject and Developing a Thesis); Heather Meeker, *Stalking the Golden Topic: A Guide to Locating and Selecting Topics for Legal Research Papers*, 1996 UTAH L. REV. 917.

circuit* near split* and date after 1/1/2007

or

(circuit* near split*) and employment³

Or within the *Daily Environment Reporter*, one might simply search for **salmon**, just to see what turns up.⁴ We also talk about industry newsletters that aren't specifically legal. Reading about what concerns manufacturers, broadcasters, hospital administrators, or restaurant owners might lead a student to think about how the law addresses those problems. And we take a look at legal newspapers—another source many students have not been exposed to.

¶12 When I've asked classes about blogs, some students say they read them in other areas (one student sheepishly admitted that she read Hollywood gossip blogs, but don't we all have our non-academic interests?), but very few are familiar with legal blogs. So in class we look at blog directories,⁵ and some of the students set up RSS feed readers and subscribe to blogs in their areas of interest. We also try searching (using Justia's Blawgsearch, <http://blawgsearch.justia.com>) and turn up posts related to some of their interests.

¶13 The American Constitution Society has set up ACS ResearchLink (<http://researchlink.acslaw.org>), a resource that matches students looking for paper topics with public-interest practitioners who would like someone to research questions. Students can sometimes pick up other people's ideas elsewhere as well. Maybe a professor in class mentions an issue that hasn't been resolved. Or they can flip through casebooks for the subject they think they want to find a topic in, looking for a comment by the authors about such an issue.

3. Some other ways to find circuit splits:

- Split Circuits, <http://splitcircuits.blogspot.com>, a blog by law professor A. Benjamin Spencer.
- Westlaw ALLFEDS: **sy,di(split conflict /s circuit authority) & da(>2006)**.
- Westlaw SCT-PETITION: **"employment discrimination" & split /p circuit authority**.
- *Seton Hall Circuit Review* "Current Circuit Splits" column (2005–).

For state law, a student might want a lower court case that has the potential to be appealed to the court of last resort or to come up again until the high court resolves it. Try something like Westlaw WA-CS: **co(low) & "first impression."**

4. Because our library subscribes to BNA's web product, we also have access to BNA databases on LexisNexis and Westlaw. I like to expose the students to the BNA interface, and they like the e-mail subscription option for future issues. But they also like the convenience of printing from LexisNexis and Westlaw, so they might choose to do their searches there. In addition LexisNexis and Westlaw also have newsletters from other publishers.

Guides that include tips on using newsletters are BNA, *Locating Topics and Cases for Writing Notes and Comments* (2006) (PowerPoint), available at <http://subscript.bna.com/pic2/lsll.nsf/id/JSCY-6F6MNG?OpenDocument>; BNA, *Locating Paper Topics* (2006) (brochure), available at <http://subscript.bna.com/pic2/lsll.nsf/id/MBER-62QNS5?OpenDocument>.

5. Directories of law-related blogs include the *ABA Journal's* Blawg Directory, (www.abajournal.com/blawgs), or Law X.0's Taxonomy of Legal Blogs, (3lepiphany.typepad.com/3lepiphany/2006/03/a_taxonomy_of_1.html). Links to these and other resources may be found in our library's guide to blogs and RSS feeds. Mary Whisner, *Blogs & RSS Feeds*, <http://lib.law.washington.edu/ref/blogs.html> (last visited Aug. 11, 2008).

¶14 Students can also try LexisNexis or Westlaw searches. Suppose a law professor writes an article on Topic A₁ and tosses off some ideas about Topics A₂ and A₃ but doesn't develop them. How could you find those ideas? Think how the professor would express it. He or she might say something like, "An interesting issue is whether blah, blah, blah. However, that analysis is beyond the scope of this article." So you could search for those comments in a law review database with a search like this:

interesting or intriguing or open /s issue or question or topic /p "beyond the scope" or "another day"

And of course you can add terms (e.g., **and "americans with disabilities act"**) to narrow it down to an area of law. Some students are intrigued by searches like these and go on to think of other ways to hunt for questions authors have posed but not answered.

¶15 Finding a topic isn't always the hardest part of a paper assignment, but it can be challenging—and nothing can move forward until it is done. In this column I have described some techniques we can teach students to help them find their topics.⁶ And I solved my own problem and came up with a topic for myself. Whew.

6. These tips are also in a guide Ann Hemmens and I put together. Marian Gould Gallagher Law Library, *Writing for & Publishing in Law Reviews: What Techniques Are Useful for Finding Interesting Topics?*, <http://lib.law.washington.edu/ref/lawrev.html> (last visited Aug. 6, 2008).