

## *Practicing Reference . . .*

### **How Do You Know When Research Is Good?\***

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*Ms. Whisner explores the question of how to tell when research is good—or who is a good researcher.*

¶1 At a recent Little League game between teams of sixth-grade boys, I heard parents yelling out advice to batters: “Lower your shoulder!” “Widen your stance!” I’ll assume it’s good advice. But how could a player tell? If he widens his stance and lowers his shoulder and then hits a good, solid double, he might think, “Wow, that really worked!” But what if he takes the advice and strikes out? Does that mean the advice was bad? Not necessarily. Even the best professional players strike out sometimes. No one bats .1000. In fact, batting .300 is pretty good. On the other hand, what if he leaves his feet and his shoulders right where they were and gets a hit anyway? That still doesn’t mean the advice was bad. Maybe the player managed to connect and get a good hit without good technique, but would do so more often if he took the advice. The test of advice—or at least one test of advice—has to be performance over time.

¶2 Of course my thoughts moved from batting to legal research. (Whose wouldn’t?) There are similar challenges in knowing whether an approach is a good one. In fact, it often will take even longer and require more discernment to tell whether a research technique is good than to see whether a batting stance works. This problem of how to tell when research is good (or who is a good researcher) relates not only to how we do research ourselves, but also to how we help patrons at the reference desk and how we teach students in the classroom. Thus, it seems worth a bit more reflection.

### **Getting the Right Answer**

¶3 Let’s start with a simple formula: Research is good when you get the right answer. Certainly getting the right answer should be an element, but does this statement cover it all?

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¶4 One problem is that a researcher might luck out, like the batter who happens to get a good hit with bad form. For instance, if a researcher forgets to check the pocket part of an annotated code and doesn't update cases or statutes in any way, he or she might still get the right answer by the good fortune of having a statute that hasn't been amended and cases that haven't been appealed or overruled. So getting the right answer is not in itself enough to say that the research was good.

¶5 In addition, a researcher might get the right answer but take three times longer than necessary. Say the right answer is a Massachusetts statute and the researcher first goes to federal statutes, then to *Am. Jur. 2d*, before finally getting around to trying the state code. Again, getting the right answer doesn't ensure that the research was good. Being a good driver involves more than reaching one's destination.

¶6 Another, bigger problem is that "the right answer" is often complex. To answer legal questions, researchers must often weave together principles found in many cases, analogizing the facts to their own clients' situations. If a researcher comes up with a list of ten cases but can't put them together logically and persuasively, was the research good? Statutes are sometimes ambiguous, so finding a relevant statute is just a start: one still needs to figure out whether it will apply to the case at hand. If the researcher finds the right cases but doesn't recognize them as right or misreads them, has the right answer really been determined? It is much harder to say whether a researcher has found the right answer than to say whether a player hit and got on base safely.

¶7 In some situations, "the right answer" is subjective, a matter of taste. If the researcher wants an overview of a subject in order to prepare for a job interview, it is to a large extent up to him or her how much breadth and depth is right. Is a Nutshell right? Is a longer work right? Are recent law review articles right? It all depends. In this example, the researcher can judge—she or he is the one to satisfy. But when doing research for someone else, judging is harder. Suppose a partner tells a summer associate, "Find the cases, articles, or whatever about new developments that I'll need to cover during this continuing legal education program I'm speaking at next month." What is the right answer? The partner doesn't know the universe of what's out there—that's for the summer associate to find out—but the associate might not be able to judge the material found or know how big a pile to produce. What *will* the partner need in order to speak at the CLE? Similarly, if a professor wants a selection of relevant material, the "selection" and the judgment of what's "relevant" are indefinite standards.

¶8 Some legal research assignments are structured so that there is a right answer. Research instructors ask students to find the statutory definition of "motorcycle helmet" or the 1978 case from Indiana that involved liability for termite damage. If you want to see whether students checked the digest's pocket part, ask for a case that's only found there. These assignments have the virtue of clarity—right or wrong, got it or didn't—but students recognize their artificiality and think the assignments are make-work. However, assignments with greater

nance can be frustrating to all—the students don't know when to stop or whether they have found what they should, and the instructors have a greater challenge in scoring the homework.

### Getting an A

¶9 Some people might say that getting an A in a legal research and writing class is evidence that the student is a good researcher. It *is* evidence, but it is not in all cases compelling evidence. First, the student could have gotten the right answer by luck or only after searching inappropriate sources. Or the student could have seen the applicable volume left open on a table, the spine broken from a hundred classmates visiting the relevant page. In any event, the grade might reflect more about the student's writing and analysis than the quality of the research.

¶10 The real-world analogues of getting an A are getting a good evaluation from one's externship supervisor or supervising attorney—or winning a motion or a case. Again, these could be evidence of good research, but it's not watertight evidence. In a work setting, the researcher can't rely on the paths trod by a hundred classmates. And the supervisor may know if a project took three times as long as needed. But, on the other hand, the supervisor might be relying on the junior employee to get the right answer and therefore would believe that whatever the employee found *is* the right answer. The supervisor could think it was good research and not know that the cited statute had been amended or the cited case had been overruled. A judge might rule in favor of the researcher's client not because of what the researcher cited but because the judge is persuaded by authority found by opposing counsel,<sup>1</sup> a clerk, or even the judge.

¶11 On the other hand, one might do good research and *not* get the A (or the metaphorical A). The research might be good, but the writing is bad, or the paper is late, or the client just doesn't have a good case. So the A isn't sure-fire evidence of good research, and not getting an A is not proof that the research wasn't good.

### Failing to Get in Trouble

¶12 Sometimes researchers get in trouble for cutting corners: their teachers mark up their papers, their supervisors send them back to the library to redo their work,

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1. Why would something cited by party X persuade the judge to rule for party Y? First, X's attorney might have cited a relevant case but interpreted or applied it in a different way than the judge does. Second, X's attorney might have known that the authority favored Y but cited it—and tried to deal with it—because of the ethical obligation of candor toward the tribunal:

- (a) A lawyer shall not knowingly:

- (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

- (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; . . .

MODEL RULES OF PROF'L CONDUCT R. 3.3 (1983).

or judges call them to task for their research shortcomings, such as failure to update or find relevant authority.<sup>2</sup> One might say a good researcher is one who doesn't get in trouble for bad research. Certainly, one wants to avoid such calamities, but I don't think that is enough. It seems rather like saying everyone who has not been in an accident or gotten tickets is a good driver.

### Going Fast—or Going Slow

¶13 Some people might say that the faster the research the better. If you can open up a database or search engine, type a few terms, click, and get results, then that must be good research. Maybe, maybe not. It's good if the results are good results—but not if you miss some information that is important for your project.

¶14 On the other hand, some people might say that slow, thorough research is good research. Again, it is not that clear. It is possible to be too slow and too thorough. If a researcher checks every conceivable source every time, then few projects will ever be completed. Deadlines won't be met, billable hours will mount beyond any client's ability to pay, and the office will become a prison.

¶15 Just as Goldilocks preferred a bed that was neither too hard nor too soft, able researchers spend the time that is neither too short nor too long for a given project. And that, again, is a matter of judgment.

### Taking Plausible Paths and Being Able to Explain Them

¶16 When interns I supervise in the reference office ask me to take a look at what they are about to send a professor, I don't necessarily know the answer, so I can't tell whether what they found is the "right answer." So I consider whether the sources and approaches used seem plausible. If the professor asked for news stories, did the intern use an appropriate database and search with reasonable search terms? Do the stories found seem to address the professor's question? That is, are they likely to be the right answer (subjective as that may be)?

¶17 The reference interview often includes a similar review. If the patron has already been working on the problem, we can discuss where he or she looked and what was found. Sometimes the patron explains the process so well—listing the print and online sources I would have used for that question—that I say, "It sounds like you've done very good research. I can't really recommend much else." But if the patron is vague about what's been done so far ("I looked online"—without saying what databases or search terms), then I suspect that the research might not have been good.

¶18 Being able to explain what one has done is especially important when results are skimpy. For instance, if the partner says with confidence that there

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2. See Mary Whisner, *When Judges Scold Lawyers*, 96 LAW LIBR. J. 557, 2004 LAW LIBR. J. 34.

should be a case to support a certain proposition and yet the summer associate can't find one, the summer associate should be able to explain all the efforts made. Faced with a cogent recitation ("I skimmed the annotations under the code section and I searched this database, trying these three searches . . ."), the partner might be convinced that there isn't a case after all. Or, perhaps, the partner will offer some suggestions for other sources or search terms to try and then send the summer associate back for more research.

¶19 This ability to reflect and discuss presents a contrast between research and batting. I think a player could be the best batter on the team and not be able to explain a bit of it. The player might be a gifted athlete who internalized the right bits of coaching and put together a good swing and a good eye, but can only explain base hits by referring to things that have little to do with batting prowess—touching the bat to the plate, spitting, tugging at the cap, wearing a lucky batting glove. But I don't think research has the equivalent of a gifted athlete who can do it well but not explain it. A good researcher could omit some bibliographic details (for instance, not knowing that *U.S.C.S.* stands for *United States Code Service*) but would still be able to articulate a reason for using the source ("I wanted to find the text of a statute and references to secondary sources and cases; I checked the pocket part for newer material."). There are times when we don't write down all of our searches and sources consulted, so at the end of a project—or two weeks later—we might not be able to describe in detail what we did and why, but we probably could have done so at the time. The ability to talk about one's research process is clearly related to whether the research is good.

## Conclusion

¶20 Knowing when research is good—or when someone is a good researcher—is not as simple as checking a baseball player's batting average. Just as a ball player can get on base with bad technique, a researcher can sometimes come up with the right answer by luck or via an inefficient route. Although batters always know whether they got on base, researchers—or the people who evaluate their work—might not know what the right answer is. The researcher might win a case despite sloppy research—or lose a case despite excellent research.

¶21 Combining the various criteria discussed, I propose this formulation:

A good researcher gets the right answer (or a plausible answer) efficiently (that is, quickly but not too quickly to be thorough enough for the task) and can explain the research process (sources and searches chosen and not chosen). Also a good researcher doesn't get in trouble with a judge, a boss, or a professor for sloppy research.

This isn't as precise as a batting average, but research is more complex and varied than even the amazingly complex and varied skills needed to connect a bat with a moving ball and get the ball to go where the fielders can't catch it.