Unanswerable Questions[*]

Mary Whisner[**]

What can librarians do when a patron asks an "unanswerable" question? Ms. Whisner addresses various types of questions that can't be answered, ways to deal with them, and how to know when a question truly is unanswerable.

¶1 There are times when, try as we might, even experienced, skilled reference librarians just can't find the answer the patron is looking for. The patrons don't know that they are asking unanswerable questions, and we often don't know ourselves that a question is unanswerable until we're several hours into the hunt. Even then, we can be unsure whether the question was unanswerable or we were just looking in the wrong places. But eventually it turns out that some questions *are* unanswerable.

¶2 I have encountered some types of unanswerable questions repeatedly: those that ask for a prediction, those that ask for data that hasn't been gathered or documents that haven't been released, and—perhaps most frustrating—those where the patron is sure of a few details of a document that are hard to match up with anything we can find. I'd like to discuss each of these types and then talk a little about what we do with the unanswerables.

No Crystal Ball

¶3 It's not uncommon for someone to ask us how long it will be until a court decides a pending case. For instance, a law student working on a case note hopes that the appeal won't be decided before the note is published. A professor wants to base a class exercise on a case that's before the Supreme Court and hopes to have the students finish the exercise before the decision is handed down. Or a member of the public who read about a Supreme Court oral argument in the paper wonders when the outcome will be known. It *would* be nice to be able to make a good prediction.

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** Reference Librarian, Marian Gould Gallagher Law Library, University of Washington School of Law.

¶4 But we can't. The best we can do is to help them see the range of possibilities. For instance, we (or the curious patron) could sample the time between argument and the court's decision for the last couple of years. Most samples will demonstrate that the court moves faster at some times than others. For instance, the Washington Supreme Court decided *Gildon v. Simon Property Group, Inc.*,[1] affirming the dismissal of a slip-and-fall case on procedural grounds, in just a month. But the same court took more than fourteen months to decide *Andersen v. King County*,[2] the controversial marriage equality[3] case that eventually had a plurality opinion (three justices), two concurring opinions, and three dissenting opinions—eighty-one pages in the *Pacific Reporter*. For United States Supreme Court cases, we can say that the Court almost always issues decisions before the end of its term in late June, but beyond that a reference librarian can't predict whether a case will be decided before spring finals any better than anyone else can.

Data Not Yet Gathered

¶5 It's great when legal thinkers try to ground their work by bringing in statistics. But sometimes the statistics they want just aren't available. For instance, there was the family law professor who wanted to find divorce statistics for our state for the previous year. He'd found the numbers for a couple of years back in an almanac but wanted to be more current. We checked various sources and just couldn't find any more recent data. There didn't seem to be a newer issue of the annual government report that the almanac cited. Ultimately one of my colleagues called the state office that compiles the statistics. It wasn't merely that the new report hadn't been issued: the office had not collected the data yet. The professor settled for the earlier year's statistics.

¶6 Another professor had a draft article about disputes over employees' noncompete agreements. Her article contrasted the approaches to the problem in appellate opinions from seven states. A student journal editor wondered how com-

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1. Gildon v. Simon Property Group, Inc., 145 P.3d 1196 (Wash. 2006) (argued Sept. 27, 2006, decided Oct. 26, 2006).
2. Andersen v. King County, 138 P.3d 963 (Wash. 2006) (argued Mar. 8, 2005, decided July 26, 2006).
3. I was persuaded by Lisa Stone, the executive director of the Northwest Women's Law Center, which represented eight of the plaintiff couples in *Andersen*, that this term better characterizes the issue than "gay marriage" or "same-sex marriage." The plaintiffs weren't asking for a new legal construct ("same-sex marriage") but to be able to participate in an existing legal status ("marriage") on the same terms as their similarly situated, but heterosexual, neighbors.

   When the court had already taken over a year and observers were speculating about the justices' work, Ms. Stone said, "This is an extremely important decision that will be analyzed and dissected all over the country and the world. From our perspective, the justices should take all the time they need—as long as they get it right." Lornet Turnbull, *Gay-Marriage Case: 15 Months, No Ruling*, SEATTLE TIMES, June 8, 2006, at A1. As it turned out, the justices went 5–4 against her position—but her point is still good. Sometimes analyzing, deciding, writing, and negotiating among the judges takes time.

mon the situation was and asked if the professor could provide any statistics about the number of such cases that were resolved at trial or before trial in the prior year. In her e-mail message to the reference office, the professor acknowledged that this was a "tall order" but wanted to know whether putting together such numbers might be possible.

¶7 We couldn't think of a way to get reliable data, but we explained what was available—and its limitations. First, we tried searches in Westlaw's filings databases. A search for **employ! /p non-compete** in CA-FILING-ALL (with the date limited to the last year) turned up fifteen documents from fourteen different cases. The pleadings and memoranda certainly gave evidence that there was action in the area, but wouldn't produce the statistics needed. First, we could not tell what happened in the cases. If the database has a complaint and no answer, does that mean that it settled? If we find "Defendant's Notice of Motion and Motion to Dismiss; Memorandum of Points and Authorities in Support," we can't assume that the court did dismiss the case. Maybe we could telephone the attorney who wrote each document and ask about the status of the case, but that would be very labor intensive. And we would still be left with the problem that the database does not purport to be complete. Even our results suggested incompleteness: if the database were comprehensive, it would surely have many documents for each case—not just a complaint, but the answer; not just a motion to dismiss, but a motion in opposition to it. Moreover, Westlaw did not have filings databases for all seven of the states the professor was interested in. (For our own state, it had some documents from federal courts but not state courts.) We also looked at jury verdict databases—but they are not at all comprehensive (usually relying on attorneys to submit reports of their cases)—and, of course, a jury verdict is only one possible way a case can be resolved. So we could get some sampling of state trial court activity, but not good statistics.

¶8 For federal dockets we had PACER. Unlike the databases we had experimented with on Westlaw, this could have some claim to comprehensiveness. But finding the relevant cases would be much harder. First, the Nature of Suit codes[4] do not offer the detail needed: 190 ("Other Labor") and 790 ("Other Contracts") were the closest to the professor's topic, but could cover many more disputes than we needed. We found over 200 cases with those codes in just one state. From that list, we would have had to look at each docket sheet to find the ones that closed within the last year. And then we would need to look at the complaint in each case to see whether it was about a non-compete agreement; if PACER didn't have a complaint or other document to reveal the cause of action, we'd have to contact the attorneys. One could take these steps in the opposite order, of course. Either way, it would still be a huge project.

4. The Nature of Suit codes are listed at http://pacer.psc.uscourts.gov/documents/natsuit.pdf (last visited Apr. 9, 2008).

¶9 When the professor asked this tough question, we did not just shrug our shoulders (or whatever the equivalent response would be over e-mail). We tried out different tools that might provide some useful information, and then we explained why the question was unanswerable.

Classified or Private Information

¶10 Just as we can't predict the future and we can't produce statistics that haven't been compiled (and that we can't compile ourselves), we can't come up with material that is denied to us. A professor interested in terrorism and the law has presented us with several challenges in this regard. After he reads about a document in the *New York Times*, he asks us to get it. But just because a *Times* reporter has found a source at the Pentagon who will talk about a classified report doesn't mean that we'll be able to get the report. It doesn't hurt to look—sometimes a news organization does obtain a document and put it up on the web—but often we can't get it.[5]

¶11 Even if not a state secret, some information just isn't widely released. For instance, a professor wanted a direct phone number for someone within a corporation, and the company operator I reached said that the company would not release the direct numbers of its executives. The professor would have to go through the operator.

Specific Questions, Imperfect Clues

¶12 On many occasions I have failed to find something a patron requested in fairly specific terms. Sometimes the patrons are quite confident of the details; other times they know they could be off. The item sought can be a quotation, a case, a book, or a law review article.

¶13 Most recently, it was a quotation. An attorney wanted help finding a passage he remembered by Justice Benjamin N. Cardozo discussing the ability of the fact-finder (judge or jury) to weigh credibility by observing a witness's "shifty glance, upturned eyebrow, etc." If the patron's details are solid, then a quotation question like this can be easy. Check the author and keyword indexes of *The Oxford Dictionary of American Legal Quotations*,[6] and if it's there, you're done.

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5. The same professor asked us for an English translation of the opinion in the Madrid bombing case the day he read in the *New York Times* that the National Court had released "written arguments." Victoria Burnett, *Convictions and Key Acquittals End Madrid Bomb Trial*, N.Y. TIMES, Nov. 1, 2007, at A3. It seemed possible that such a newsworthy ruling would be translated into English—that is, until the reference librarian working on it (Cheryl Nyberg) found news stories that said the ruling was 700 pages long! Tracy Wilkinson, *21 Convicted in Madrid Train Blasts*, L.A. TIMES, Nov. 1, 2007, at A3.

   Vicenç Feliú at LSU sent us a link for the Spanish text (http://www.poderjudicial.es/eversuite/GetRecords?Template=cgpj/cgpj/pjexaminarjurisprudencia.html&TableName=PJJURISPRUDENCIA&dkey=913), but that instant English translation remained elusive.

6. THE OXFORD DICTIONARY OF AMERICAN LEGAL QUOTATIONS (Fred R. Shapiro comp., 1993).

If not, go online and search opinions by Cardozo for the words "shifty" and "eyebrow."

¶14 But this time, the first, obvious searches didn't turn up the passage. I thought of ways that the patron's recollection might be off. Could the quotation use "sidelong look" instead of "shifty glance"? Or "brow" instead of "eyebrow"? Could the quotation actually allude to other facial features altogether? Could a passage remembered as by Cardozo really be by someone else but with a similar stature—say, Wigmore or Holmes? And so I searched more broadly, in different ways. I told the patron the approaches I tried and suggested others he might try. For instance, I searched all opinions by Cardozo with the key numbers relating to appellate review of witness credibility.[7] That didn't work. So if the patron was sure it was Cardozo, he might try looking at Cardozo's articles or speeches. Again using the key number search, I found other passages in which an appellate judge wrote of the fact-finder's ability to see nuances in a witness's expression. The patron could do more of that if he wanted to find the passage he recalled. (He said he'd be able to use one of the passages I found.)

¶15 Another time I failed to find something described in specific terms was when a professor asked me to find an old nuisance case from Pennsylvania involving "gob piles" (piles of coal near train stations) in which the alleged polluter said the piles were safe because tramps slept in them. I found Pennsylvania cases with the term "gob pile" but nothing about tramps (or hobos or transients) sleeping in the gob pile. (I did find a case where a witness had a "transient" disturbance of his "sleep"—but that's not the same as transients sleeping, is it?) Could the case the professor remembered be from Ohio or West Virginia, not Pennsylvania? Could it be, perhaps, "coal storage piles" rather than "gob piles"? I tried different permutations and never did find what the professor recalled. This one was frustrating because this professor has a good memory, and if he says a case like that exists, it probably does—although not necessarily with all the details he provides. He might say "last five years" for a case that's ten years old or "Vermont" for "New Hampshire," but the core is always there.

¶16 On the other hand, I've worked with patrons who were quite sure of something that might not exist. A man recently wanted help finding the federal statute or rule that requires a plaintiff to send a letter of intent to sue before filing a complaint. He was sure that such a requirement exists (I doubt it, myself). I told him that I hadn't heard of it and showed him books on civil procedure and indexes to the Federal Rules of Civil Procedure and the *United States Code Annotated*. But I wasn't able to direct him to a source with the rule he "knew" was out there.

¶17 Someone else, years ago, was sure that there was a Supreme Court case saying that no employer could fire an employee based only on an affidavit. When

7. Appeal and Error, key number 994 ("Credibility of witnesses"), subheadings (1) "In general," (2) "Province of jury," and (3) "Province of trial court."

West's Supreme Court Digest didn't offer any leads, I suggested books about employment law. (I was thinking that a discussion of the employment-at-will doctrine would help her see that there probably wasn't a case with the holding she was so sure of.) She didn't want books on employment law. When she said that the famous Supreme Court case she was looking for was during the McCarthy period, I suggested that she try a book on that, because if the case was really that famous it would be discussed in the book. Again, she didn't want to try that. I'm sure she was frustrated with her visit to the law library, since I couldn't help her find the case she knew was there.

Uncertainties and Explanations

¶18 It is not always clear whether a question is unanswerable or just hard to answer. I'm pretty confident that the request for statistics that the agency hadn't yet compiled was unanswerable. But the "gob piles" case or the Cardozo quotation? I don't know for sure. There's a difference between "I can't find the answer" and "The answer can't be found."

¶19 One way to check ourselves is to consult with colleagues—either in the office next door or across the country. We can ask one or two friends we think would have good ideas about how to approach the problem, or we can ask an entire listserv. Our colleagues can either help us past a roadblock or confirm that the question probably can't be answered.

¶20 Whether a question is truly unanswerable or simply stumps us, we serve ourselves and our patrons well if we explain our thinking and our research process. It's not enough to say, "I looked but I couldn't find what you asked for." If we explain where we looked and what we tried, it helps the patron understand why we weren't able to find the answer. That might persuade the patron that the answer isn't findable (with the resources available). Or the patron might come up with other ideas for searching—perhaps a clue that was omitted in the first request or a synonym for the search terms we'd used.[8] Explaining our unsuccessful paths might also help patrons reshape their expectations. They might decide that another quotation or an older statistic will do after all. It at least gives them the option.

¶21 Part of the joy of reference work is finding the answer. It's just fun to have someone ask for something hard to find, hustle around, think of a creative solution, and come up with something that is spot on. So of course it's unsatisfying to fail in the pursuit. Recounting what we tried (and why) takes some of the sting out of the failure, because we can show that we gave it a good try, using our skill and creativity to tackle what might really be an unanswerable question.

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8. We also give this advice to law students going off to their summer jobs. When they can't find the authority the assigning attorney sent them for, they should be able to explain where they looked and what they tried.