

*Practicing Reference . . .*

**Researching Outside the Box\***

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*Ms. Whisner demonstrates that many law-related projects require law students and lawyers to use skills that are outside the core legal research skills which they learn early in law school. She argues that law librarians need to be familiar with the skills and sources of disciplines other than the law and be prepared to guide—or push if necessary—patrons outside the box when appropriate.*

¶1 We law librarians are very familiar with the core legal research skills—using the various secondary sources about law and finding and updating statutes, regulations, and cases. These skills are our bread and butter, and we teach them to law students, paralegals, and attorneys. However, many projects—in various legal fields—demand research skills outside the core. We need to be familiar enough with areas outside the core that we will be able to guide researchers there when appropriate. Talking to two classes recently drove this lesson home to me.

¶2 The first class was on the international law of the sea. It was a large class (forty-three students), about half from the law school and half from the School of Marine Affairs graduate program. The professor is very organized and careful, and had made suggestions about the handout and presentation to Peggy Jarrett (my copresenter) and me. I began the class by asking the students about their paper topics (which ranged from pollution in straits to endangered sea turtles) and getting them to speculate about what sorts of sources they might need. I covered some general points about international law research, secondary sources, and so on. Peggy then spoke about treaty research, locating UN materials (in our library, in the main campus library, and on the Web), and other topics. She showed them some great Web sites.<sup>1</sup> A couple of weeks later, I spoke to a legal history seminar with just eight students, all from the law school. Their papers would focus on Washington State topics. As the professor had requested, I devoted most of my

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1. For the guide that we—and others—prepared for this class, see MARIAN GOULD GALLAGHER LAW LIBRARY, UNIV. OF WASH. SCH. OF LAW, INTERNATIONAL LAW OF THE SEA, at <http://lib.law.washington.edu/ref/LOS.html> (Jan. 8, 2003).

time with the class to a tour of the library, paying particular attention to some of the old and quirky materials in our basement. Because of the topic, class size, and style of the professor, this class was much more casual in tone than the previous one (although I did have a plan for what I wanted to cover<sup>2</sup>).

¶3 These two diverse presentations had one common theme: the research the students would be doing for these classes would be very different from what they had done for their first-year research and writing course. That is, even the students who thought they had great legal research skills would have to stretch. (Some of the marine affairs students had done some legal research for another class, but they had not, of course, had a full year of legal research and writing as the law students had. The professor said that they were nervous about writing a paper for a law course. Perhaps it comforted them to learn that the law students also were beginners with respect to international law research.)

¶4 To make the point that their research for this class would be out of the ordinary, I had to sketch the *ordinary* first-year research project: you are given the facts,<sup>3</sup> you look at secondary sources (such as *Corpus Juris Secundum*, *American Law Reports*, hornbooks, law review articles, etc.), you look at the statute and its annotations, you find cases (usually just from your jurisdiction), you update with citators, and you write the memo or brief. Let's call this model "the Box."<sup>4</sup> Students in these two upper-level classes would be breaking out of the Box in all directions.

¶5 Let's start with the side of the box that separates law from other disciplines. To write about the regulation of driftnet fishing on the high seas, a student needs to learn something about driftnet fishing. Some students could stick with legal materials: perhaps a law review article or book about the law of the sea has a description of what driftnets are, how they are used, and why they are of concern. However, a student could write a stronger paper that reflected a deeper understanding of the fishing industry and the marine environment by utilizing nonlegal sources. And that means leaving the law library—for instance, venturing across campus to the Fisheries-Oceanography Library. Even without physically moving, students can be said to leave the law library—or go outside the Box—when they use nonlegal databases. For instance, the law of the sea students might use databases available through our university library, such as Aquatic Sciences and Fisheries Abstracts, GeoRef, and Water Resources Abstracts. The news sources available on LexisNexis and Westlaw are outside the traditional legal research

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2. See MARIAN GOULD GALLAGHER LAW LIBRARY, UNIV. OF WASH. SCH. OF LAW, RESOURCE GUIDE TO GALLAGHER LAW LIBRARY'S WASHINGTON STATE LEGAL HISTORY COLLECTIONS, at <http://lib.law.washington.edu/ref/legalhistory.html> (last modified Feb. 3, 2003) (includes annotations by former law library intern Lisa Wagenheim).
  3. In a moot court problem or other canned assignment, students get prepackaged facts. The most realistic problems present students with an appellate record, including excerpts from a trial transcript or affidavits supporting a summary judgment motion, from which they must winnow relevant facts. Still, the facts are given.
  4. The Box might also include regulations and municipal and county codes.

Box—and could be very valuable. For example, the student who wants to write about pollution in the Baltic Sea might find relevant articles from European and U.S. newspapers.

¶6 The legal history students likewise would need to use materials from other disciplines. Legal history uses the tools of historians to look at a legal development. For example, historian Suzanne Lebsock explored the legal status of women in a Southern town before the Civil War by using evidence found in “letters, diaries, institutional records, and newspapers,” as well as “wills, deeds, court minutes, census schedules, city directories, and tax lists.”<sup>5</sup> Those primary materials, dry in themselves, enabled her to construct a rich narrative. Students in the legal history seminar are encouraged to use such primary sources, as well as books and articles by historians and legal scholars. They can choose to examine the evolution of a statutory scheme, the events surrounding a famous case, or a legal controversy (such as school integration). Some students write biographies of lawyers or judges.<sup>6</sup>

¶7 Legal history (like history generally) can also draw on other fields, such as geography, sociology, economics, or urban planning. For example, an interesting paper could be developed about land use in Seattle in the 1940s and 1950s. What were the population shifts during and after World War II? How did the city respond to the post-War housing shortage (which was exacerbated by the baby boom)?<sup>7</sup> Did the zoning codes change to allow for housing developments? What was going on with industry (notably Boeing and the shipyards)? How did federal rent control<sup>8</sup> work? To research a paper like this, a student could use some familiar materials (e.g., Washington Supreme Court cases) but would also draw from other sources around campus. For example, the special collections division of our university library has photographs, personal accounts, and newspapers from the period; the architecture and urban planning library has zoning materials; government publications has census data; and the map library has old maps. One might also think about transportation (the decline of the streetcar lines, the rise of the automobile). Who knows what might be available in local archives? One would also want to explore the work of others. Perhaps someone has already covered this territory in a master’s thesis or Ph.D. dissertation. Maybe recent news stories

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5. SUZANNE LEBSOCK, *THE FREE WOMEN OF PETERSBURG: STATUS AND CULTURE IN A SOUTHERN TOWN, 1784–1860*, at xiv (1984).
  6. Stanford’s class in women’s legal history produces biographies of women lawyers. See ROBERT CROWN LAW LIBRARY, STANFORD LAW SCH., WOMEN’S LEGAL HISTORY BIOGRAPHY PROJECT, at <http://www.law.stanford.edu/library/wlhb/> (last visited Mar. 30, 2003).
  7. The postwar housing shortage brought my parents together: they were renting rooms in the same house (owned by my father’s uncle and aunt; the aunt worked with my mother at the Fort Lawton PX). In the early 1950s, they bought a house in a new subdivision just north of the city limits. Their baby-boom children attended the first school built in a newly formed school district.
  8. The federal Office of Price Administration imposed rent control in “Defense-Rental Areas,” including “the Puget Sound Defense-Rental Area.” Maximum Rent Regulation No. 20, 7 Fed. Reg. 4104 (May 27, 1942).

(available online) have examined the history of particular neighborhoods or businesses.

¶8 It is not just the search for factual context that makes students leave the Box. Searching for law presents its own challenges. In typical first-year assignments, professors ask students to research the law in jurisdictions whose materials we collect. That is, they have to write a memo or moot court brief for a problem set in the Ninth Circuit or in Washington or in California.<sup>9</sup> But for the upper-level classes, students might need to find law from jurisdictions not available in our library. For instance, a student looking at national efforts to protect the Baltic Sea from pollution would need to consider nearby coastal nations: Finland, Sweden, Estonia, Latvia, Lithuania, Russia, Poland, Germany, and Denmark. Our library does not have all of those countries' laws. The student might need to plan ahead sufficiently to request material through interlibrary loan. Then there is the language problem: very few people can read all the pertinent languages. So the student could look for summaries and translations—again, outside the Box. Some of the most useful material might be found in news stories or on Web sites—even further outside the Box.

¶9 An international law topic, like the law of the sea, draws on sources of law not even contemplated in first-year courses.<sup>10</sup> Consider the list of sources that the International Court of Justice applies in deciding disputes:

- a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- b. international custom, as evidence of a general practice accepted as law;
- c. the general principles of law recognized by civilized nations; and
- d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.<sup>11</sup>

Treaties and international agreements are a source of law that few law students see in their first year. However, students who have worked with statutes and constitutions can easily make the transition to reading treaties.

¶10 The other sources of international law are more challenging for students who are used to the Box. Where do you go to look up “custom” or “the general principles of law recognized by civilized nations”? Certainly there is no authoritative text, as there is for a statute or a case. Westlaw has no INTL-CUSTOM data-

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9. Some moot court problems take place in fictitious locales, like the Fourteenth Circuit, but the sources of law are still inside the Box—in that case, the federal statutes plus persuasive authority from the actual courts of appeals.

10. There are exceptions. *See, e.g.,* Diane Penneys Edelman, *It Began at Brooklyn: Expanding Boundaries for First-Year Law Students by Internationalizing the Legal Writing Curriculum*, 27 BROOKLYN J. INT'L L. 415 (2002) (discussing a first-year international law moot court course).

11. Statute of the International Court of Justice, June 26, 1945, art. 38(1), 59 Stat. 1055, 1060. *See also* RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 102 (1987) (sources of international law).

base, nor does LexisNexis offer a simple step-by-step method for finding the principles of law recognized by civilized nations. Here is where secondary sources assume a special role.

¶11 In the Box, secondary sources are useful as background. They may be persuasive to a judge, but students learn to cite applicable statutes and cases as authority and cite secondary sources sparingly. The story is somewhat different in international law, where secondary sources can be evidence of international law.<sup>12</sup> Of course, secondary sources are not created equal; researchers need to sort out what counts. Is a second-year student writing a case comment one of “the most highly qualified publicists of the various nations”? I don’t think so.<sup>13</sup> But a law professor might be. And not just U.S. law professors; researchers will want to find out what the scholars (publicists) are saying in other nations. Treatises from other countries, international law yearbooks, and foreign law journals are all outside the first-year Box. International law researchers use more than legal treatises and journals: they also go outside the Box to find sources from other disciplines—e.g., history, geography, anthropology, political science—to use as evidence of custom.

¶12 The Box has several sides. We have already seen how students break out of it through the discipline side—e.g., looking at history or fisheries, not just law. International law researchers also break out through the wall that defines what counts as “law”—in a sense, stretching the “U.S. law” Box into a bigger box. But researchers also need to break out of the Box through the side that represents *time*.

¶13 In the first year (and in many subsequent research contexts), the theme of currentness is drummed into the minds of students. Again and again we remind them that statutes can be amended and cases overruled, so they must always check for new developments. We drill them on checking the pocket part, using supplements, verifying case status with citators, and so on. If they are using a treatise or hornbook, we insist that they choose the latest edition. Contrary to all these lessons, the students in the legal history class might need the out-of-date statute or the overruled case. For a paper considering the litigation strategy behind a case from decades ago, a student should look at the state of the law at that time. Why didn’t the attorneys raise a certain argument? Maybe no one thought of it; maybe the law didn’t support it then. I talked to the legal history class about searching the catalog for books published *before* a certain date—a novel approach for students used to looking only for the most up-to-date material. Even though they had signed up

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12. For more on evidence of international law, see RESTATEMENT, *supra* note 11, § 103.

13. “The ‘teachings of the most highly qualified publicists of the various nations’ . . . include treatises and other writings of authors of standing; resolutions of scholarly bodies such as the Institute of International Law (Institut de droit international) and the International Law Association; draft texts and reports of the International Law Commission, and systematic scholarly presentations of international law such as this Restatement. Which publicists are ‘the most highly qualified’ is, of course, not susceptible of conclusive proof, and the authority of writings as evidence of international law differs greatly. The views of the International Law Commission have sometimes been considered especially authoritative.” *Id.*, reporter’s note 1.

for legal history, they had not thought about using law reviews that predated the articles available on LexisNexis and Westlaw. Some seemed surprised that they might need to use print sources—even print indexes. (They found some solace when I showed them that many older journals are available electronically through Hein-on-Line.)

¶14 When I led the legal history students through the basement, I pointed out a range of heavy tan books and asked if they looked familiar. None of the students recognized the shelves and shelves of *Martindale-Hubbell*.<sup>14</sup> They all use the source in their job-hunting, but they use it on LexisNexis (no one in the group had used Martindale-Hubbell's Web site, either). We talked about some uses for this retrospective collection—if they want biographical information about a particular attorney, say, or if they want a snapshot of the legal community at a given time. (Today's students are often unaware that the largest firms in town had only a dozen or two attorneys just a generation ago.)

¶15 It is not just legal history students who need to look at older materials. For international law scholars examining the custom that requires states to allow merchant ships to pass through straits, for instance, sources from even ancient times could be relevant.<sup>15</sup> International scholars often cite classic treatises from past decades—or past centuries.

¶16 Skeptical readers might think that these two classes are too specialized or quirky to be of much general interest. However, the research challenges these students face are not unique—or even very uncommon. The law of the sea is not the only branch of international law, of course; almost all of the comments about that class could apply as well to international human rights,<sup>16</sup> international trade law, and so on. Academic legal history is not the only occasion prompting law students and lawyers to look backward. Lawyers working on today's legal problems often need to find the law as it was at the time of a past transaction, to research the legislative history of a statute enacted long ago, or to explore a line of cases from the past. Moreover, many practicing lawyers benefit from the materials of other disciplines. For example, in making a policy argument about the law, one may well draw from economics and social science. When advising a client in industry, one needs to know something about business and technology. And litigators often need to learn enough about different subjects to develop their cases and to select and communicate with expert witnesses. In fact, learning about different fields—from

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14. MARTINDALE-HUBBELL LAW DIRECTORY (1931–); see also MARTINDALE'S AMERICAN LAW DIRECTORY (1897–1930), HUBBELL'S LEGAL DIRECTORY: ATTORNEYS LIST, ETC. (1873–1930).

15. Usually one does not look quite as far back as ancient times. See RESTATEMENT, *supra* note 11, Introductory Note (“While there have been relations between ‘states’ since early human history, and some law governing those relations, modern international law is commonly dated from the Peace of Westphalia (1648) and the rise of the secular state.”).

16. For an interesting example of tenacious and creative factual research in an asylum case, see Agata Szypszak, Clinical Essay, *Where in the World Is Dr. Detchakandi? A Story of Fact Investigation*, 6 CLINICAL L. REV. 517 (2000).

automotive engineering to neuroscience—can be one of the most enjoyable aspects of litigation.<sup>17</sup>

¶17 We reference librarians regularly see that people need information that is outside the Box. Our users—faculty members, lawyers, law students, and others—come to us for help locating it. Most reference librarians would be able to expand the examples above, citing times they have helped someone locate material from other disciplines. We know that students need to be able to research outside the Box.

¶18 However, I do not fault first-year research and writing courses for focusing on the Box. What I have characterized as “the Box” is indisputably the core of legal research, and all law students should develop those skills. The amount of material to cover even in an advanced legal research class is impressive and often crowds the time available.<sup>18</sup>

¶19 To some extent, we can assume that law students already have some basic research skills outside the Box. After all, they all went to college—and many have done graduate work as well—so they must have done research. We librarians should be prepared to guide—or push—researchers outside the Box when appropriate. We also need to be familiar with some of the terrain outside the Box ourselves. And that means understanding that our specialty of law librarianship often requires dabbling in (or plunging headfirst into) other disciplines.

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17. Interview with Kristin A. Henderson, law librarianship student, University of Washington, in Seattle, Wash. (Feb. 2003).

18. For a list of law-related topics covered in advanced legal research courses, see Ann Hemmens, *Advanced Legal Research Courses: A Survey of ABA-Accredited Law Schools*, 94 *LAW LIBR. J.* 209, 231, 2002 *Law Libr. J.* 17, ¶ 54 tbl. 12. Significantly fewer courses address nonlegal research topics. *Id.* at 232, ¶ 56 tbl. 13.