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Six Research Pitfalls to Avoid

By Bethany Rabe – July 31, 2017

You're feeling pretty good: You think you've found the perfect answer to the research question. You print it out, highlight it, and hand-carry it to the partner's office. She's going to be grateful, you think. Impressed, even. She may even talk you up at the shareholders' meeting. Your future is bright.

If this were a movie, however, ominous music would be playing and the audience would be screaming "*Turn back! Turn back!*" Why? You've made one of the mistakes outlined below. Turning in this assignment spells certain doom. Don't do it! Read on to turn this movie from a horror film into a biopic about the greatest lawyer who ever lived.

1. Don't Ctrl+F Yourself

Technology is a great thing, isn't it? Well, sometimes. I think we can all agree that it is not a great thing when it makes you look like an idiot in front of the partner. How can it? Have you somehow not noticed that your "perfect" answer comes from the local family division rules and not the local civil rules? Or that the statute you've identified is applicable to only one type of trust and not the one the partner asked about? How are you making these mistakes? Two words: Ctrl+F.

It is so tempting, especially when we're rushed, to use that shortcut to quickly identify relevant terms in the seemingly endless local rules or voluminous statutes. I'm not saying you should never use it. It's a time-saver. But for the love of SCOTUS, once you find that key term, take the time to back up and get some context.

Relatedly, Westlaw is smart, but it's not that smart. When it offers you secondary sources that contain your terms, before doing your happy dance, take a minute to read the title of the document. If that spot-on statement about duty that would be perfect for your negligence memo comes from the leading treatise on maritime law, it's probably not going to be useful in your Kansas state court litigation.

2. Don't Succumb to Issue Drift

This scenario happens all the time. The partner gives you an assignment: research the fourth sub-element of X cause of action. You start researching. You don't find much on the fourth sub-

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element, but, boy howdy, is there a lot out there on the fifth! Like a black hole, it sucks you in. You spend significant time and hand it in proudly. The partner stops using you. What just happened?

Issue drift. If the partner has given you a specific issue to look at, look at that. Only. Chances are she didn't ask you to look into the fifth sub-element because (a) she already knows what she needs to know about it; (b) she assigned someone else to look at that issue; or (c) it's not in play right now (perhaps it's not in dispute or its relevance is contingent on something else happening first, etc.).

This is not to say you shouldn't take initiative. When you come across the fifth sub-element, pick up the phone; ask her if she'd like you to look at that also. If she says yes, great; if she says no, you've saved yourself some written-down time.

3. Don't Cite Good Law from a Bad Case

We all know to make sure we aren't inadvertently quoting from the dissent; we at least scan up and down a bit to check that we're in the majority opinion. But there's a more nuanced problem along those same lines: citing good law from a bad case. How often do we simply pull the standard—the elements of negligence are X, Y, and Z. *See Smith v. Doe*—without looking at what actually happened in *Smith v. Doe*? The statement of the law might be neutral, but if *Smith v. Doe* went the "wrong" way on similar facts, you've shot yourself in the foot. Your research goes into the brief, the associate on the other side pulls the cases and gets a present, courtesy of you. (Of course, if *Smith v. Doe* is binding authority, you may have an ethical obligation to disclose it; you should make sure the partner knows about it if it falls into that category.) You can hear opposing counsel now: "Your Honor, *theirown cited case* says. . . ."

The same thing can happen where there is more than one cause of action at issue. You're looking for case law on breach of contract and fraud in the inducement. *Smith v. Doe* has a great holding for you in the breach of contract context. You gleefully cite it, not realizing that *Smith v. Doe* has a disastrous holding for you on fraud in the inducement in another section of the opinion. Take a step back and read through the case as a whole before touting it to the partner as a great find.

4. Don't Use "Form" Documents

This is advice that we've all heard and we've all ignored. "Time is money!" you cry. "It would

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save so much time in drafting this motion to dismiss if I could just use the one Associate X filed last month!" Believe me, I know. But be careful.

Glance at some examples if you must, but pitfalls abound: The standards in the case law could have changed (as they have recently for general personal jurisdiction and discovery, for example); Associate X's motion may have been in federal court while you are in state court (different rules!); or Associate X may have been feeling lazy that day and pulled standards from an old document, which in turn pulled standards from an old document, and before you know it, you're under a statute that Edward Coke drafted in the 1500s.

The same goes for more specific documents like contracts and settlement agreements. Each client has different needs; there is no one-size-fits-all solution.

5. Don't Ignore Footnotes

This one seems silly, but it's true. How often do we pull facts and law from a case without taking the time to read the footnotes? Even if it's not very often, you can guarantee that the time you don't read them is the time when (1) opposing counsel does and (2) the court distinguishes your exact facts. "This is not to say, however, that we would reach the same conclusion if the facts were [your facts here]." "We note we might hold differently if [your facts here]." Take the time now; save face later.

6. Don't Go It Alone

I know, I know, we are litigators. We're tough, we're cocky, we don't need no help from nobody. Plus, people will think you're stupid if you ask for help. Right? Wrong. People will think you're smart for knowing what you don't know and not wasting client money trying to figure it out on your own.

There are myriad resources. If you don't understand an assignment, ask the partner. If you don't understand the partner, ask another partner or senior associate she works with frequently. Or ask the nice associate down the hall who keeps trying to put together associate happy hours. Paralegals are full of useful knowledge. The partner's assistant may also have the inside scoop. And if no one has a clue what the partner wants . . . , at least you'll know you aren't the only one.

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