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Research Strategies and Organization

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Chapter 11

Research Strategies and Organization

The model for the research process outlined in Chapter 1 assumes a project that is undertaken from scratch, with no prior knowledge of the area of law or essential relevant authorities. Chapter 1 calls this a “fresh search.” However, each research project is by nature unique, and thus requires a distinctive strategy. This chapter explores the ways a judicious researcher can take the essential elements of a fresh search, consider the practical confines of the research environment, develop a strategy for approaching the research process that fits the unique problem, and implement that strategy in a cost-effective and efficient way. The chapter culminates in recommendations for organizing the information gathered so that you can convey your findings in a clear, thoughtful, and useful manner. The chapter concludes with tips on how to know when to end your research.

1. Developing a Research Strategy

A. Review the Research Process

As explained in Chapter 1, the research process has some essential elements that must be completed for your work to be thorough. These elements include (1) framing the question(s) and developing search terms; (2) identifying, prioritizing, and consulting relevant sources; (3) expanding and updating your research; (4) making sure your research is responsive to the question(s) presented; and (5) knowing when to stop. Within each element is a series of discrete tasks that, when conducted carefully and with attention to detail, help assure a high-quality work product.

B. Think Through the Practical Considerations

Before spending any significant time conducting research on the issues you have identified, always take a moment to consider the practical matters that



will define the contours of your research. Thinking about matters such as the ones listed here at the outset of your project will help you more clearly define the best strategy for the work ahead. While this list certainly is not exhaustive, it should provide an important starting point for developing a solid research strategy.

- **How much time do I have to complete the research?**

A sound strategy for research that must be delivered in a few hours will look markedly different from the strategy adopted for a problem you have several days or weeks to address. Will you need to select authorities that hone in on more practical and succinct discussions of the matter or will you have time to consult sources that offer a lengthy theoretical overview of the issue? You must also consider the scope of the articulated research question itself when time is of the essence. It is possible that a more finely tuned articulation of the question will allow you to focus on only the most essential resources available.

- **What are the budgetary constraints of the project?**

Both the amount of time you spend and the types of resources you consult will be determined in great part by the amount of money that should be spent on the case at hand. Large-scale toxic tort litigation may require both significant time and access to detailed and expensive research resources. In contrast, a small claims action arising out of a dispute between neighbors is likely to require less time and probably will not merit the expense associated with accessing a large number of costly resources. Moreover, because some of the time spent on research may ultimately be billed back to the client, understanding the time you are expected to bill can inform the strategy you adopt. While it is true that the scope of a research project may change after you conduct some initial inquiries, it is important to begin with a good sense of the appropriate fiscal resources to devote to the matter.

- **What kinds of research resources are available, and how are they billed?**

Whether you work in a small solo practice, a government office, or a large firm, having a thorough knowledge of the research resources available to you and the kinds of costs associated with those resources is critical to developing and implementing your research strategy. The unfettered access to print and electronic resources that most attorneys experienced in law school will likely be unavailable in the workplace. A good research strategy will include a plan



to review resources that are relevant, easily accessed, and fit in the time and budgetary constraints of your project.

- **What types of authorities are likely to control?**

Asking this question forces you to examine the area of law you are working with to decide which authorities are most likely to have a determinative impact on the outcome of the case. If the area of law is heavily regulated, make sure your strategy emphasizes federal, state, or municipal regulations as appropriate and be attentive to them when they are referenced in secondary sources. If common law is more likely to control, make sure you focus a significant portion of your strategy on efficient and effective case law research. While the goal of every good research strategy is to be thorough in consulting all potentially relevant or determinative authorities, spending a little bit of time thinking about which authorities are likely to be most important can improve both efficiency and effectiveness.

- **What is the appropriate jurisdiction for this problem?**

When we talk about the appropriate jurisdiction for a legal research problem, we are referring both to “a geographic area over which a particular lawmaking body’s laws are controlling,”¹ and also to potential circumstances in which factors beyond geographic area may control the law applied. In many instances, it will be relatively clear whether state law, federal law, municipal law, or a combination controls an issue. However, you may encounter a problem in which the controlling jurisdiction is not clear. The matter may include people, entities, or events from multiple states or countries. Clarifying the appropriate jurisdiction at the beginning of the research process can help you avoid spending unnecessary time and money researching your problem in the wrong jurisdiction.² It is always more efficient to address issues related to jurisdiction before moving on to other substantive legal issues.

- **What information do I already have?**

Perhaps the most important question to ask at the outset of the research process is what valuable information you already possess. When you were assigned this project, were you given the name of a relevant case or the citation to a controlling statute or regulation? Do you know the date on which the

1. Deborah A. Schmedemann et al., *The Process of Legal Research* 6 (9th ed. 2016).

2. For a review of the foundations and bases of jurisdiction, see chapters 2 and 6 of David D. Siegel and Patrick M. Connors, *New York Practice* (6th ed. 2015).



cause of action arose? Has your law office or firm handled similar cases in the past, and if so, could briefs or filings from earlier cases help you quickly identify potentially relevant resources? Identifying pieces of the research puzzle already in place can help you decide how to proceed efficiently.

Recognize that you may not initially have the answers to these and other practical considerations. If that is the case, write the outstanding questions in your research notes (discussed in the following section), and pursue the answers before you start researching in earnest. Because these types of questions can have a significant impact on your overall research strategy, answering them up front will save you time and energy.

C. Take Notes That Make a Difference

One of the simplest and most effective tools for developing and implementing a solid research strategy is keeping quality research notes. Good notes provide a visual reminder of your research plan, track the steps already taken, reflect both the fruitful inquiries and the dead ends you have encountered, and allow space for process-oriented additions and analytic connections between the concepts and resources explored. It does not matter whether you prefer to use a pencil and paper, a computer, a tablet, or a smart phone to record your research notes. The most important part of note taking is giving yourself a space to keep track of your work and make important connections between the concepts and ideas you discover along the way.

Figure 11-1 shows one example of a framework for taking research notes. The first four of the five essential elements of the research process are clearly reflected in the template. It includes space to note relevant facts and flesh out a clear issue statement. It also provides an area for reflecting on important considerations reviewed at the outset of the research process. Chapter 1 discusses in detail the process of developing search terms for your project, and the template offers a section in which each of these search terms can be recorded. Another valuable feature of this particular framework is the dedicated space for recording both the resources already consulted and the references to additional authorities encountered along the way. Equally important is the section at the bottom of the template reserved for analytic notes on the connections between concepts and the questions that remain unanswered. Finally, useful research notes include both the date on which the research was conducted and clear citation information for the sources consulted. Knowing precisely what you reviewed and when you reviewed it is one way to maximize efficiency by reducing the likelihood that you will have to retrace your steps.



Figure 11-1. Template for Research Notes

Facts:			
Issue statement/questions presented:			
Practical considerations: Time: Money: Controlling authority: Jurisdiction: What is known:			
Search terms:			
<u>Things</u>	<u>Actions</u>	<u>Relief</u>	<u>Persons</u>
<u>Sources consulted</u>		<u>Secondary references</u>	
<u>Statutes and/or regulations</u>		<u>Case citations and digest topic and key numbers</u>	
Follow-up questions and connections:			

By committing to taking research notes, you avoid the tempting habit of printing resources and highlighting relevant sections without really digesting the material you read. Putting concepts and connections in your own words and writing them down helps situate them in your mind more firmly. Note taking is a more active approach to research that encourages you to become genuinely engaged with the material rather than skimming or scanning it. This



kind of active engagement is critical to making the kinds of connections required to truly understand the research problem at hand.

D. Choose a Strategy that Fits

Once you have thought through the practical considerations and prepared yourself to take good notes, it is time to begin shaping the fundamental elements of the research process into a unique strategy for your problem. A good strategy lays out the steps you plan to take in the research process, yet remains flexible enough to allow for change if new information comes to light.

i. The Fresh Search

Chapter 1 provides an overview of the research process that assumes you have no prior familiarity with the area of law or resources best suited to answering the issues posed. When undertaking a fresh search, the best strategy is typically to work through the research process in the order described in that chapter, especially in Part 4.

Begin by framing your research question and developing useful search terms. Think through the practical matters described above, and then create a foundational understanding of the issues involved by consulting secondary sources. Let the secondary sources inform your understanding of the legal context of the problem and search them for citations to relevant primary authorities. Begin your work with primary authorities by researching either statutes or cases, and turn to administrative law afterwards. As you examine the primary authorities, make sure you update and validate each one before relying on it for your analysis.

Once you have immersed yourself in the sources you have located, review the questions presented to ensure that your research addresses each point. When the questions presented have been satisfactorily answered or, alternatively, there is an absence of mandatory authority on point despite extensive searching, turn your attention to organizing your findings and delivering the results.

ii. Starting with a Case, Statute, or Regulation on Point

Occasionally, the issue you must explore is given to you along with a citation to a relevant primary authority. You may be aware of a case that discusses the matter, the interpretation or application of a given statute may be at issue, or an administrative rule could be the subject of the dispute. In one of these circumstances, you may choose to alter your strategy to take advantage of the information you already know.



Rather than immediately searching for secondary sources to build a foundational understanding of the problem, first consult the primary authority in hand. Think about the language used, and make sure your search terms list includes the important words, phrases, and concepts found there. Take time to validate the source you have. Use updating tools not just to verify that the authority is “good law” but also to expand your research. Chapter 8 thoroughly discusses both functions of a citator.

If the primary authority you have is a case, use the editorial features of your research platform to find other, similar case law in your jurisdiction. Chapter 4 covers researching judicial opinions and explains how to use “one good case” to find other cases. If you are working with a statute, consult an annotated code to find cases that interpret or construe the statute and secondary sources that deal with the same area of law, as discussed in Chapter 5. Should you find yourself with an applicable regulation at the outset, review and follow the recommendations in Chapter 7 to develop your foundation and locate additional authorities.

iii. Using an Iterative Approach

In developing your strategy, remember that research is not necessarily a linear process. Rather, it is an iterative process in which the primary objective is a thorough exploration of your issue. Instead of focusing on completing each element of the research process in a particular order, focus instead on making sure you have been appropriately attentive to each step. Several legal research scholars suggest that an iterative, or recursive approach is a natural and regular part of the research process.³ One author notes that researchers sometimes make forays into potential issues that seem to be on point but later turn out to be tangential to the problem. “[I]t is not uncommon to start off in one direction, find it unproductive, and decide to go in a different direction.”⁴ This is a clear example of the value of an iterative approach. Experienced researchers know that steps of the research process must sometimes be repeated in order to fully explore the legal issues implicated in a problem. “Searching is a process, not an event.”⁵

3. Barbara A. Bintliff, *Introductory Essay*, The Boulder Statements on Legal Research Education xi (Susan Nevelow Mart ed., 2014); Amy E. Sloan, *Researching the Law: Finding What You Need When You Need It* 49 (2nd ed. 2017); Eric P. Voigt, *Legal Research Demystified: A Step-by-Step Approach* 17–25 (2019).

4. Schmedemann et al., *supra* note 1, at 26.

5. VersusLaw, Inc. Research Manual, Part I, Electronic Searching Strategy, www.versuslaw.com; select FAQ/Help, Research Manual, Research Manual Part 1—Search



iv. Researching within Time Constraints

Time limitations are another important reason to carefully consider adjusting your research strategy. When pressed for time, the most valuable action is to carefully define the issue or question presented. Being very specific about the information you need can save time and energy and prevent you from chasing leads for peripheral issues. If you have been presented with a problem that requires a fresh search, follow the recommendations in part D.i., above with an eye toward using the most quickly and easily accessed resources. If you have some authorities already in hand, get the maximum benefit from them by following the guidelines in part D.ii., above.

E. Cost-Effective Research Methods

This chapter has already touched on some strategies for cost-effective legal research. Nevertheless, you should apply a few basic principles to each project to maximize your effectiveness for the research dollars you spend.

i. Consider the Format

First, think about the cost of accessing a resource in print versus online. The simple act of considering a resource's format has the potential to significantly impact the amount of money and time you spend researching an issue.

This is particularly true in the early stages of research. When developing a foundational knowledge of the area of law with which you are working, choosing to browse a greater number of secondary sources in a less expensive way can be helpful. Print sources are not associated with an hourly or transactional cost, so you can browse as many of them as you like for as long as you need to without incurring any expense beyond the initial purchase. If you are fortunate enough to have access to a law library, find out what kinds of secondary sources are available in print. Consider a nearby state library, court library, or an academic library in the area where you can obtain low-cost access. The less focused you are in your research process, the more valuable browsing a wide variety of low-cost resources can be.

While print research certainly has cost-based advantages, remember also that there is a monetary value for the time spent researching. Though print research can often be conducted just as quickly if not more quickly than elec-

Basics (accessed November 5, 2019), as cited in Amy E. Sloan, *Researching the Law: Finding What You Need When You Need It* 49 (2nd ed. 2017).



tronic research, there may be times when print research would take much longer than a comparable search in a fee-based electronic resource. More experienced researchers can identify these instances. The process of updating authorities is one task that is faster and far more comprehensive when done electronically.⁶ Ultimately, you will have to engage in a cost-benefit analysis to determine if it is better to spend a greater amount of time or money on a given task, and format will certainly be part of that evaluation.

ii. Consider Free Sources

A number of government, nonprofit, and other online resources provide easy access to high-quality, trustworthy, and even official or authenticated material. These resources are discussed throughout this book. Many state bar associations have relationships with vendors, such as Fastcase or Casemaker, that allow free access to members of the bar. At the date of this writing, the New York State Bar Association provides free access to selected portions of Fastcase for its members.⁷ Additionally, resources such as Cornell University's Legal Information Institute,⁸ New York State's official website,⁹ and the Government Publishing Office's govinfo¹⁰ portal offer free access to valuable research resources. For a thorough discussion of online legal research, including more information about free online sources, consult Chapter 2.

F. Sample Strategy

To make the recommendations in this chapter more concrete, consider the following hypothetical, first introduced in Chapter 1, and the sample research strategy. Your law firm requires that each new associate engage in at least fifty hours of pro bono service per year. The firm has accepted a pro bono case representing an individual who was recently incarcerated and has assigned the case to you. In keeping with his cultural and religious beliefs, your new client has long hair and a beard. The local prison requires that he cut his long hair and shave his beard, citing safety and the need to be able to identify the man

6. Updating research electronically is so much more efficient, comprehensive, and up-to-date that libraries have almost completely abandoned collecting print volumes of *Shepard's Citations*. Chapter 8 discusses tools for updating in depth.

7. Legal research services available to New York State Bar Association members are on the bar association website, www.nysba.org.

8. The website is www.law.cornell.edu.

9. The website is www.ny.gov.

10. The website is www.govinfo.gov.



while in holding. Before you meet with your client and develop your position, you need to know about any cases, statutes, or rules governing the alteration of a prisoner's personal appearance and whether such alterations are a violation of his rights. You have been given one week to research the issue and draft a memorandum to your supervising attorney. You have been told to keep the costs "reasonable" and have not been offered any authorities on point to start your research. Table 11-1 lists the strategic steps you might take to complete the assignment.

Table 11-1. Sample Research Strategy

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1. Frame the questions presented to the best of your ability and write what you develop at the top of your research notes.
 2. Review practical considerations, such as your time and cost limitations, the research resources readily available to you, the jurisdiction for your problem, and the authorities that are likely to control. Be sure to note information already in your possession that may help you answer the questions.
 3. Generate search terms, as described in Chapter 1.
 4. Choose appropriate secondary authorities to help you develop a foundational knowledge of the area of law. There are at least two excellent *American Law Reports* annotations on prisoners' rights and religious observance, and *New York Jurisprudence* contains a significant amount of valuable information as well.
 5. Note the primary authorities you found referenced in both the discussion and the footnotes of the secondary sources consulted. In this instance, the authorities may be cases, statutes, or regulations.
 6. Skim the resources you gather and note the important concepts or additional primary authorities cited. Then go back and carefully read and consider the authorities that are most relevant to your problem.
 7. Conduct searches targeted to statutes, cases, and administrative rules. Using online services, you can either run a search from the main search bar and then review various types of authorities, or search in specific sources for cases, then statutes, etc. Read these authorities, as well as any relevant cross-references to other authorities.
 8. Update those primary authorities on which you intend to rely, both to assure that they are "good law" and to expand your research.
 9. Note follow-up questions and summarize the connections you have made.
 10. Follow up on any outstanding questions, organize your findings, and prepare to draft your memo or make your oral report.
-



2. Organization

While much of this chapter emphasizes the organization of your research for maximum efficiency and effectiveness, you should also consider organizing the results of your research to help you develop your analysis. This process includes organizing the secondary sources and primary authorities on which you will base your assessment of the legal situation and organizing the ultimate analysis of the problem.

A. Organizing Authorities

In organizing the authorities themselves, you should begin by placing all the authorities you find useful in a digital folder so that you can quickly refer to them as you work. If you are using products like Lexis Advance or Westlaw Edge, you have an organizational system right at your fingertips. Lexis Advance and Westlaw Edge both offer customizable folders, while Fastcase provides “My Library” in which you can save useful documents. Chapter 2 discusses foldering and digital annotation of research materials in major legal research platforms in greater detail.

If you are using free resources to conduct your research, such as Cornell’s Legal Information Institute or government websites, consider downloading relevant documents and saving them or linking to the documents in a cloud-based reference or citation management tool. Products such as Evernote, Juris-M, Mendeley, and Zotero can be particularly useful in organizing material from online resources because they capture essential information required for citation and allow users to tag content or organize it by project or topic. When used consistently, reference management tools can function as personal digital libraries,¹¹ allowing researchers to make analytical connections between and among sources as they work. Once your documents are stored in a commercial folder system or cloud-based research or citation management tool, you are free to revisit the material as often as you need to without having to search for it again.

You may also consider making a print copy of the primary authorities on which you intend to rely in your analysis. It is often helpful to make notes on each source indicating why it is important. Rather than simply highlighting critical passages in the text, either make analytic notes in the margins or cross-reference your research notes in a way that is clear and meaningful to you (e.g., writing “1” in the margin of the case and explaining your idea in your notes

11. Merinda Kaye Hensley, *Citation Management Software: Features and Futures*, 50 Ref. & User Serv. Q. 205 (2011).



at “1”). It is typically less important to retain print copies of secondary authorities you reviewed in your research, but you may wish to keep selected secondary sources that significantly contribute to your understanding of the legal context or provide a particularly useful list of references to relevant primary authorities. When in doubt, err on the side of retaining more material rather than less, as it is much easier to recycle extra materials at the end of your work than to retrieve the authorities again later. You may choose to organize the print copies by the type of authority (e.g., cases, statutes), the subject matter addressed, or chronology. Any of these organizational schemes may be a good choice depending on the problem you are researching and the connections you have made between and among relevant authorities.

B. Organizing Analysis

As with research notes, there are a number of ways to organize the analysis of a research problem so that you can easily review and summarize your work. The format you choose is not nearly as important as the fact that you create some kind of document reflecting your work. Table 11-2 presents one method for organizing your findings. Again, as described earlier in this chapter, the client is an incarcerated man and the issue is whether he must submit to having his hair and beard cut as part of the prison’s standard intake procedure.

An analysis chart such as the one in Table 11-2 helps identify the authorities that relate both to the overarching questions in your research and to the more specific sub-issues that must be addressed. A chart with this level of detail may seem unnecessary when you are working with a fairly straightforward question or very few primary authorities. However, as you research subjects that are more complicated, have a greater number of sub-issues, or involve more complex primary authorities, this type of organizational structure can bring clarity to each aspect of your research. This type of chart is also incredibly helpful if you are conducting research at the request of a supervisor and will ultimately need to turn your results over to that individual.

3. Ending Research

As noted in Chapter 1, knowing when to end a project is one of the greatest challenges novice researchers face. While some legal questions have clear answers stated definitively in relevant primary authorities, most research projects will not have a definitive answer that helps identify a natural stopping point. For questions of first impression, no binding authority exists in your jurisdiction



on which you may rely. Other issues can be resolved in part, but some sub-questions may remain unanswered. While the art of ending the research process is developed through experience, the following strategies may help you identify an appropriate stopping point.

Ask yourself if the resources you have discovered are responsive to the questions you are attempting to answer or the issues you are working to address. The analysis chart in Table 11-2 may help you determine when you have sufficient answers to the relevant questions, assuming you have developed the chart in a detailed and thoughtful way. If issues remain unaddressed, review the basic steps in the research process again, and consider whether you have neglected to work through any steps. If there is no binding authority in your jurisdiction on a particular issue, have you considered persuasive or analogous authority? Has your research put you in a position to make a persuasive argument, even if there is no dispositive authority for your issue? Finally, be attentive to the point in your research when you cease to find new authorities on point. When continued work fails to yield new results, you have likely reached an appropriate stopping point.¹²

12. See also Barkan et al., *Fundamentals of Legal Research* 24 (10th ed. 2015).



Table 11-2. Organizing Research Results with Analysis

Issue presented: <i>Must a person submit to having his hair cut and beard shaved as part of a prison's standard intake procedure when his cultural and religious beliefs require that he neither cut his hair nor shave his beard?</i>				
Relevant Authority	Summary of authority	Client Facts	Assessment	
62 ALR Fed. 479	Secondary authority reviewing case law regarding the validity under federal law of prison regulations relating to inmates' hair length and style.	The client may consider a federal Constitutional claim under the First Amendment.	Provides citations to federal case law, including cases from the Second Circuit	
N.Y. Correction Law § 112	"The commissioner of corrections and community supervision shall have the superintendence, management and control of the correctional facilities in the department and of the inmates confined therein ..."	The client is an inmate in a New York correctional facility.	The commissioner does have the authority to promulgate rules related to the inmates in New York correctional facilities. Perhaps consider the scope of the rulemaking authority.	
N.Y. Correction Law § 45(6)	"The commission shall ... [p]romulgate rules and regulations establishing minimum standards for ... the care, custody, correction, treatment, supervision, discipline, and other correctional programs for all persons confined in correctional facilities."	The rules to which the client objects are purported to relate to inmate care and facility security.	This statute provides some insight into the scope of the rulemaking authority.	
NYCRR § 7005.5	Consistent with the requirements of Part 7024 of this Title, the chief administrative officer may establish rules for the permissible style and length of inmates' hair.	The client indicates that his objection to the grooming requirement is religious in nature.	This rule is subject to Part 7024, which provides that "Prisoners are entitled to exercise their religious beliefs in any manner that does not constitute a threat to the safety, security or good order of a local correctional facility, or the health of any individual."	



Table 11-2. Organizing Research Results with Analysis, *continued*

<i>People v. Lewis</i> 68 N.Y.2d 923	Where a prisoner had not cut his hair for 20 years due to his religious beliefs, and where a prison's intake process required a haircut and shave for male inmates for the stated purpose of sanitation and the taking of identification photographs, the prisoner was not required to submit to a haircut because the state's interests could be satisfied by having the man pull his hair back rather than cut it.	The client objects to a haircut and shave, but has not explicitly objected to having his hair pulled back.	This less intrusive means of achieving the prison's stated objectives may be agreeable to both sides and may prevent the need for additional legal services.
<i>Holt v. Hobbs</i> 135 S.Ct. 853	Where a Muslim prisoner was prohibited from growing a 1/2 inch beard in accordance with his sincerely held religious beliefs, and where the prison asserted that the policy prohibiting the beard was based on security and identification concerns, the court found that the policy substantially burdened the prisoner's exercise of religion and was not the least restrictive means of accomplishing the prison's objectives.	The rules to which the client objects are purported to relate to security and identification of inmates. Additionally, the client's objection to the grooming requirement is religious in nature.	Arguing the client's position in a way that closely tracks the court's opinion in this case may result in the finding that the prison's policy does not offer the least restrictive means of achieving its objectives. As with <i>People v. Lewis</i> , this may help persuade the prison to accept a less intrusive means of achieving their objectives.