



## THE ART AND CRAFT OF STRATEGIC LEGAL RESEARCH\*

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*You have waited a long time for this day . . . your first day working in a professional law office! Eager to dive in and begin to practice, you meet with a supervising attorney who gives you your very first assignment.*

*But the meeting is nothing like you expected. It lasts fewer than five minutes, during which the attorney hands you a manila file and provides a quick synopsis of the matter. Surprised, you leave the office with only the most general impression of what is going on in the case. You are expected to turn in a completed memorandum in two days—and you are terrified that you have misunderstood the attorney’s main question.*

*Confused, you return to your office, and start your research. You do not have much time. And you are not sure where or how to begin.*

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Although this uncomfortable situation befalls many law students and new lawyers, it need not happen to you! This document is designed to help you confidently conduct efficient and accurate legal research in *any* setting. Whether you are working in a clinical program, a judge’s chambers, a non-profit organization, a private firm, or a classroom, these guidelines will help you devise an effective strategy for researching any legal issue, no matter how unfamiliar.

### ***Is Legal Research Different in a Law Office than it is in Law School?***

Substantively, no. Regardless of the setting, your research always should be thorough and accurate. However, there are several practical differences between the academic and professional environments that might affect how we approach our legal research:

- **Time:** You have more time to complete your assignments in school than you will in most professional settings.
- **Resources:** Online legal research is quite costly—once you leave Georgetown, Lexis and Westlaw no longer will be free. Because of this, some employers prefer that you use the books to conduct most of your research, and then use an online service to update your law.

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\* By Sharon Nokes and Tanya Stern

- **Second Chances:** In law school—as in any academic setting—your professors encourage you to learn through trial and error. You experienced this in your first-year Legal Research & Writing class by accomplishing “draft” and “final” versions of your interoffice memorandum and appellate court brief. In the “real world,” however, it saves time and money to get your research right the first time.

These real-world differences are significant. While it always is wise to have a thoughtful *research strategy* in place before you begin to research, it is especially critical to take this first step in the professional setting, to ensure accurate and timely results. The following pages provide a step-by-step guide to effective workplace (and scholarly) legal research.

## **Research Strategy Step 1: Confirm the *Topic* and *Scope* of Your Assignment**

Your research process begins during the initial meeting with your assigning attorney, who is one of your most valuable research sources. Although she may not know the substantive law associated with your assignment, your assigning attorney likely has thought a great deal about the case, and probably has considered potential arguments and issues that you can explore. With this in mind, there are several techniques you can use to maximize this important resource:

- **Listen carefully** to the attorney as she describes your client’s situation. What are the key facts of this case? What is the jurisdiction? What legal issues is she asking you to research? In other words . . . *what is the question presented?*
- **Ask thoughtful questions** to refine both the legal issue and the scope of the assignment. When the assigning attorney identifies the issues to research, consider repeating those issue statements back to her to ensure that you understand them. Most important—do not be afraid to ask your assigning attorney to clarify confusing facts and/or issues. Do not be shy! Sometimes, these meetings function not only as “assigning” sessions, but also as “*brainstorming*” sessions. Your questions might help the assigning attorney to formulate the legal problem more precisely; this, in turn, will make your research much more focused.
- **Take careful notes** during the discussion. You will use these notes extensively during your *pre-research* phase, will consult them periodically during your research and writing process—and may even revisit them weeks or months later in conjunction with follow-up assignments.

### **Practice Tip#1**

Before leaving the meeting, glance at your notes and confirm that, at minimum, you understand

the *key facts* of your case;  
the *jurisdiction*;  
the *type of issue* you will research;  
the *scope* of your assignment;  
the *format and length of the final product*; and  
the *due date*.

## **Research Strategy Step Two: Pre-research**

After receiving the assignment, your first instinct might be to log on to Westlaw or Lexis and immediately begin to research. Resist the temptation—this probably is not the best use of your valuable time! Because you (and your employer) want your research and writing to be both time-efficient and cost-efficient, consider taking some time to strategize before you dive in.

***Thoughtful pre-research is essential to effective and accurate legal research and writing.*** The following pre-research strategy provides one way to ensure that your research will be efficient and that your final product will be on-point:

- **Create a written summary of your assignment.** This summary should include the key facts and issues that you have been asked to research. It also may include open questions or ancillary issues that you need to answer or explore during your research phase.
- **Share your summary with the assigning attorney** and ask whether you have properly understood the assignment. Do not be alarmed if she corrects or changes your summary; it is very possible that your perspective has inspired her to generate further questions and issues to research. If the assigning attorney is not available, consider sharing your summary with a colleague, who also might think of some different angles to explore.
- **Craft a research plan.** Once you are confident that you understand the scope of your assignment, it is extremely helpful to spend time crafting a thoughtful research plan. A research plan is more than a quick list of search terms—it also is a “plan of attack” that will guide where to begin and end your legal research. Taking time to create a well-thought-out research plan will pay dividends later on for several reasons:
  - First, research plans help you to isolate *legally significant facts*—the critical facts upon which your case likely will turn. By thinking about those details before you research, you will be better equipped to craft a precise list of research terms—and will save yourself a great deal of time in the long run.
  - Second, research plans help you to preliminarily organize your legal argument. In most cases there are substantive or jurisdictional *threshold questions*, whose answers will impact the direction and content of your entire assignment. Researching and answering those questions *first* could provide a framework for conducting the rest of your research. For example, if your client’s standing to bring suit is unclear, you may use frame your research and subsequent legal analysis around this critical threshold issue.
  - Third, research plans help you to explore your issue from *different perspectives*. By viewing your problem from different angles, you will be well-equipped to structure a logical research process. For example:
    - You may be more comfortable tackling your research from the “outside-in,” working from an overarching question down to the details. Some writers prefer tackling regulatory or policy questions this way, examining legislative intent and statutory language first, and then analyzing whether a precise regulation or factual situation at issue comports with Congress’ mandate.

- Other times, working from the “inside-out” might be more intuitive. Some writers feel more comfortable analyzing common-law problems this way, building case upon case to create a cohesive legal argument.

By using your *instincts* to structure your research plan, you will feel more at-home with your research.

- Finally, a well-structured research plan likely will provide the *analytical framework* for your final, written work product. By thinking strategically from the beginning, you will be able to organize and draft your assignment more quickly.

### **Practice Tip #2**

Research plans are wonderful research and writing tools, which vary from person to person. Here are a few ideas you can combine or use individually to help craft your own research plan:

**Idea A:** Write what you believe to be the **answer** to the assigning attorney’s question. Follow your instincts, use your commonsense and what you have learned from other assignments and in law school—and be as detailed as possible. You also might consider noting your opponent’s potential arguments, to ensure that you are aware of **both sides** of the issue throughout your research. Extract the key terms from your answer and use them to generate more search terms for your research.

**Idea B:** Create a **chart** that includes the following columns: **who, what, where, when, why and how**. Fill in the chart with as many details from your case as possible. Take note of any areas where you think you need more information or clarification from the assigning attorney and ask those questions as appropriate. These details will eventually become some of your search terms.

**Idea C:** Break the issue down into several **questions** and write them down, incorporating the facts of your case into each one. This will give you a number of smaller issues to focus on when you research. For example, if you have a statutory question, some of your questions might be, “What elements must we establish to prevail in court?” or “Can we collect damages?” After writing out the question, **arrange** the questions in the order that seems most logical to you, and attack those questions, one by one, during your research.

## **Research Strategy Step Three: Research, Research, Research**

With your research plan in hand, it’s time to start researching. But where is the best place to begin—primary sources or secondary sources?<sup>1</sup> This depends on two things: your personal learning style, and your level of comfort with the topic and scope of your assignment. Ask yourself the following questions to guide your initial choice of sources:

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<sup>1</sup> For more detailed information on when and how to use primary sources, see generally Jessica Robinson & Tanya Stern, WHEN AND HOW TO USE SECONDARY SOURCES AND PERSUASIVE AUTHORITY TO RESEARCH AND WRITE LEGAL DOCUMENTS (2004), <https://www.law.georgetown.edu/wp-content/uploads/2018/02/strategicresearch.pdf>

- ***How do I learn?*** Some writers are very detail-oriented, and prefer synthesizing a legal argument from discrete points of law, which they extract from specific statutes, cases or regulations. For these writers, *primary sources* provide the level of detail they seek.

Other writers are more comfortable conceptualizing the big picture before learning the details, and prefer to begin their research by learning how their issue fits into the larger legal landscape. For these writers, *secondary sources* provide much-needed context.

Consider your personal learning preferences and begin your research using the source that feels most comfortable. Again, your instincts are probably good ones.

- ***Am I comfortable with the legal issue?*** Sometimes you will have a focused understanding of your legal issue and jurisdiction, and will be comfortable beginning your research using *primary sources*, such as constitutions, statutes, cases, rules, and regulations.

Other times, you will be completely unfamiliar with the area of the law surrounding your assignment. Many legal writers who find themselves in strange territory are more comfortable beginning their research using *secondary sources*. Law offices often house a collection of these books, which are easy (and free) to use. Often your choice of secondary sources will depend on your degree of familiarity with and/or the obscurity of the topic

- You might consult a *legal encyclopedia* like *American Jurisprudence, 2d (Am. Jur.)* or *Corpus Juris Secundum (C.J.S.)*, if you need a very general summary of your topic. Although you will not cite encyclopedias in your document, they may provide citations to cases and other useful materials that address your issue.
- You might consult a *treatise* if you are looking for either a summary of your issue, or a sense of how your narrow issue fits into a larger area of law. Practitioners often consult treatises, particularly if there is a seminal compilation on a particular subject. For example, when beginning their research, attorneys often consult texts like *Moore's Federal Practice*, *Corbin on Contracts*, *Lafave & Israel's Criminal Procedure*, etc. Treatises provide explanations of the law, and may also provide citations to relevant cases, statutes, regulations and other sources.
- You might consult *American Law Reports (A.L.R.)* if you seek in-depth treatment of a narrow aspect of your legal issue. A.L.R.s often address developing or controversial areas of the law, and do not discuss every topic. However, if your topic is addressed in an A.L.R. annotation, this source can be a real time-saver, providing a useful overview and analysis of the current state of the law, and citing relevant primary sources.
- If you are researching an administrative law issue, you might consult the relevant agency's *Internet site*, to learn about the agency's purpose, policies, and dispute resolution processes.
- Finally, remember that *people* are valuable secondary sources too! Colleagues and reference librarians can provide a wealth of accessible, inexpensive and on-point information. Why reinvent the wheel? If someone in your office has already done relevant work, try to incorporate his or her knowledge when conducting your research.

### **Practice Tip #3**

After a while, you may find that your initial choice of primary versus secondary sources varies with each assignment. This is perfectly normal—whereas your preferred approach to learning probably will not change much, your level of comfort with the law will vary from assignment to assignment, thus dictating your initial choice of research material.

For example, a detail-oriented learner who is completely unfamiliar with tax law and terminology might look to the CCH *U.S. Master Tax Guide* before pouring over U.S. Tax court cases. Similarly, a big-picture learner who is quite familiar with communications law might skip reading Hamburg’s telecommunications treatise and turn to the 1996 Telecommunications Act. Follow your instincts and begin with source that is best suited to your research situation.

### **Research Strategy Step Four: Research your Research**

Regardless of whether you begin your research using secondary or primary sources, remember that legal research—like legal writing—is a recursive process, which contains an element of “trial and error.” Because of this, your initial research sometimes will not yield many useful primary sources. If this happens, use these “dead ends” to refine your list of search terms.

Often, however, your search will lead to a source that squares with your case, either directly or analogically. When this happens, take time to note the search terms that generated that source and make a list.

- Use those terms in conjunction with the *digest system* (either online or using the books) to locate relevant case law in your jurisdiction that both helps and harms your case.
- *KeyCite* or *Shepardize* the most helpful cases you find to locate similar precedent.
- Repeat this process with any useful sources you find.

Eventually, your research will repeatedly direct you to the same universe of cases, statutes, regulations and rules. When this happens, it probably is time to stop searching for sources. This does not, however, mean that you are done researching. Before you finish, be sure to use Lexis or Westlaw to *update* all the law you intend to discuss in your assignment. Make sure that your law is not only *current*, but also *valid*. You do not want to mislead your assigning attorney—or your client—by including overturned decisions in your final work product!

**Practice Tip #4**

Often, it is difficult to know when to stop researching. Remember, however, that it is neither necessary nor helpful to overload your assignment with citations to cases that are only marginally relevant. Because you took time to *think* about your assignment, to *understand* your legal framework, and to *craft* search terms to fit your problem, you are well-positioned to find the *most* relevant cases, statutes, and/or regulations.

Use these sources as the foundation for your legal argument. If you notice gaps in your logic, you can conduct more research to fill them in—but you likely already have enough material to create your well-written and thoughtful work product.

**Research Strategy Step Five: Organize Your Research**

Once you have located—and read—your sources, you might be tempted to start writing immediately. Again, resist this temptation! Your writing will be far more efficient and precise if you organize your research before diving in. Just as crafting a thoughtful research plan is essential to successful legal research and strong legal writing, designing a system for organizing your research will enhance the quality of your final product. Every writer has a preferred method of organizing her research; here are a few examples to help you craft your own.

- **Method A:** For some writers, *charts* provide an excellent vehicle for organizing case law. Think about your assignment and the product you have been asked to write, and craft your chart in a way that logically explores your analytical points. For example, if you are conducting preliminary research for a memorandum or brief, your chart might look like this:

Citation/ Summary	Holding	Reasoning	Critical Language	How Case Helps my Client	How This Case Helps my Opponent
<u>Ferguson v. Charleston</u> , 532 U.S. 67 (2001).  S.Ct. invalidated a drug interdiction program in which state hospital, in cooperation w/ police, performed nonconsensual urinalysis on pregnant women to obtain evidence of criminal drug use.	Program = 4 <sup>th</sup> Amend. violation.  Rejected argument that this was a “special needs” search, serving a need beyond ordinary law enforcement	Program created and executed in conjunction w/ the police to discover and produce evidence of identifiable criminal wrongdoing from citizens with ordinary expectations of privacy.  “Immediate need” connected to law enforcement	“The threat of law enforcement may <i>ultimately</i> have been a means to an end, but the direct and <i>primary</i> purpose of the policy was to ensure the use of those means. <i>In our opinion, this distinction is critical.</i> ” <u>Id.</u> at 83-85 (emphasis added).	In contrast to <i>Ferguson</i> , the Act’s <i>immediate</i> goal <u>not</u> law enf.—it’s to fill CODIS database w/ samples from qualifying fed. offenders, promoting <i>ultimate</i> goals of solving past /future crim. investigations, exonerating the innocent, & deterring recidivism.  Emphasize that DNA alone <u>not</u> indicate donor committed crime.	Δ likely will argue that the immediate purpose of DNA statute/database is quintessential law enforcement. The nexus b/w mandatory DNA fingerprinting and law enforcement is almost as close as the drug testing program in <i>Ferguson</i> . Thus, forcing felons to donate DNA as condition of probation is an unreasonable search in violation of the 4 <sup>th</sup> Amendment

- **Method B:** Some writers prefer using *outlines* to integrate their research and analysis. After surveying the research, consider creating a rough outline of your document’s key points. As you review your research, insert the law or facts under the appropriate headings.

In the following example, the writer integrates her case research and her own thoughts into her primary analytical points. By using her outline to organize and *pre-write* her argument section, she will save herself quite a bit of writing time:

### Appellate Brief Research Outline

**Theme: Requiring a felon to provide a DNA fingerprint as a condition of supervised release does not constitute an unreasonable search under the Fourth Amendment.** [*Note: emphasize “fingerprint” analogy b/c fingerprinting is a “search” sanctioned by the S.Ct. / CAs*]

- I. **Issue 1: Collecting DNA fingerprints pursuant to DNA indexing statute falls squarely w/in Fourth Amendment’s “special needs” exception.**
  - A. Griffin v. Wisconsin, 483 U.S. 868, 873 (1987). “[A] search unsupported by PC may be reasonable when special needs, beyond the normal need for law enforcement, make the warrant and probable cause requirement impracticable.”
    1. *Note: underlined language is key. Must show CODIS serves SN distinct from run-of-the-mill law enf.*
    2. *Note: Δ will argue that collecting DNA to solve crimes is law enforcement!*
  - B. **Valid SN Search:** Michigan Dept. of State Police v. Sitz, 496 U.S. 444, 451-55 (1990) – sobriety checkpoints to keep drunken drivers off the road fell within special needs exception.
  - C. **Valid SN Search:** Skinner v. Ry. Labor Executives Ass’n, 489 U.S. 602, 619 (1989). SN exception applies to substance abuse testing for RR e’ees who violate certain safety regulations.
  - D. **Invalid:** Ferguson v. Charleston, 532 U.S. 67 (2001). Drug interdiction program in which state hospital, in cooperation w/ police, performed nonconsensual urinalysis on pregnant women to obtain evidence of criminal drug use. “Immediate” and “ultimate” purposes fleshed out. Not SN search b/c both the immediate and ultimate purposes of the program = criminal law enforcement.
  - E. **Invalid:** Indianapolis v. Edmond, 531 U.S. 32 (2001). Hwy. checkpoint prgm. whose primary purpose was to discover illegal narcotics.
  - F. *Key point: primary purpose of both valid programs not directly related to law enforcement. OK that “ultimate” purpose related to law enforcement. Argue that DNA Act similar to these programs b/c immediate purpose is to fill database w/ DNA samples—not to nail criminals.*
- II. **Issue 2: Conditioning a felon’s parole on submission of a DNA sample not unreasonable.**
  - A. **Requiring DNA sample barely impacts probationer’s diminished physical/personal privacy interests.**
    1. *Submitting a blood sample is a negligible physical invasion.*
      - a. Winston v. Lee, 470 U.S. 753, 762 (1985). “Blood tests do not constitute an unduly extensive imposition on an individual’s personal privacy and bodily integrity.”
      - b. Skinner, 489 U.S. at 625, 634 – upheld program requiring mandatory blood testing of RR e’ees employees in the interest of public safety. *Good case—blood test/special need synthesis*
    2. *As a convicted felon on probation, M’s expectation of privacy less than other citizens’.*
      - a. Probationers like M have diminished expectation of privacy and enjoy “only conditional liberty . . . dependent on observance of special restrictions.” Morrisey v. Brewer, 408 U.S. 471, 480 (1972).
      - b. *See also Griffin v. Wisconsin*, 483 U.S. at 868, 873-74 (“Probation, like incarceration, is ‘a form of criminal sanction imposed by a court upon an offender after verdict, finding, or plea of guilty’ . . . . Inherent in the very nature of probation is that probationers do not enjoy the absolute liberty to which every citizen is entitled.”)
      - c. United States v. Knights, 534 U.S. 112, 121 (2001). Reaffirmed notion that “state’s interest in apprehending violators of the criminal law, thereby protecting potential victims of criminal enterprise, may justifiably focus on probationers in a way that it does not on the ordinary citizen.”
    3. Because CODIS, like fingerprint records, logs i.d. markers, M’s privacy interest not unduly burdened

- a. Info. from DNA extraction nearly identical to that derived from fingerprinting – “i.d. marker unique to the individual fr. whom info. is derived.” Rise v. Oregon, 59 F.3d 1556, 1559 (1995).
  - b. *Concede that gathering such information from ordinary citizens violates the Fourth Amendment.* Davis v. Mississippi, 394 U.S. 724 (1969). *But note that* everyday “booking” procedures require accused persons to provide fingerprint identification, regardless of whether the underlying crime generated fingerprint evidence. Smith v. United States, 324 F.2d 879, 882 (D.C. Cir. 1963) (“it is elementary that a person in lawful custody may be required to submit to . . . fingerprinting . . . as part of the routine identification process.”).
  - c. No additional finding of individualized suspicion is required before a suspect is fingerprinted. Napolitano v. United States, 340 F.2d 313, 314 (1st Cir. 1965).
  - d. Jones v. Murray, 962 F.2d 302, 306 (4th Cir. 1992). Upheld storing fingerprints in database “not only to solv[e] the [instant] crime . . . but also [to maintain] a permanent record to solve other past and future crimes.”
- B. Gov’t has urgent interest in using DNA information to exonerate suspects and solve future crimes.**  
*Important! de-emphasize punitive consequences of DNA Act and emphasize “just” results.*
- a. DNA Backlog Elimination Act: Hearing on H.R. 3087 Before the House Judiciary Comm., 106th Cong. 9 (2000) (statement of Rep. Blagojevich, Member, House Judiciary Comm.). “Much of the potential benefit of the DNA analysis is stymied by the backlog of hundreds of thousands of cases awaiting analysis . . . FBI data reveals that [in cases] where there are known suspects, about 25 percent are actually exonerated [by DNA information].”

**Practice Tip #5**

Regardless of your strategy, organizing your research not only will help you understand the law and its application to your case—it also will help you spot holes in your analysis and refine your plan for organizing your final document. This, in turn, will make your writing process quite enjoyable—and will help you to efficiently and effectively create accurate and powerful legal documents.

***Good Luck!***