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Conducting 50-State Survey Research: Lessons Learned Through Criminal Justice Research

Janet Kearney

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CONDUCTING 50-STATE SURVEY RESEARCH

LESSONS LEARNED THROUGH CRIMINAL
JUSTICE RESEARCH

Ten tips for conducting
effective multi-state
survey research.

BY JANET KEARNEY

Multi-state surveys enable us to compare the laws of multiple jurisdictions in the United States. They may cover all 50 states (which is where they get their popular name, 50-state surveys), and they may cover statutes or regulations, or both. These surveys are published as law reviews, books, or resources in specialized databases. Free resources exist to some extent. Among the best are the bill-tracking databases from the National Conference of State Legislators.

Because there is such a wide variety of resources, it can be time-consuming to find what you need. *The Subject Compilation of State Laws* by Cheryl Nyberg annotates state surveys, covering hundreds of subjects and publications. It digs into the minutiae of available materials, including sources such as footnotes in court decisions that provide citations.

This article provides a set of general tips and recommendations for conducting a multi-state survey and notes major obstacles. Some of these helpful tips are second-nature to librarians, but they are nevertheless worth repeating here. If you are working with research assistants, it is worth taking the time to emphasize these important tips.

Top 10 Tips and Recommendations

Many of the examples presented here are based on a survey conducted to assess correctional institutions, but the same issues apply to research involving government agencies generally. The results of my initial survey can be found in Johanna Kalb's article, "Gideon Incarcerated: Access to Counsel in Pretrial Detention." (Read the article at bit.ly/JA20Gideon.)

1. Identify exactly what you want to know.

Is it important for you to find all regulations on a subject? Do you more generally want to know how a public policy is implemented in a state regardless of the legal mechanism? In the survey that inspired this article, we wanted to know what public policies govern access to counsel for those individuals incarcerated pretrial. Given the broad nature of the inquiry, we focused on specific types of access: what public policies govern the contact a pretrial detainee can have with their attorney as it concerns mail, telephone calls, and in-person visits? By looking generally for public policies that are ultimately administered by agencies, we realized we would likely have to consider statutes, regulations, and policies.

2. Develop a detailed plan.

You will be derailed by unexpected difficulties. This is a natural by-product of surveys because of the different ways states organize their legal information. You may come across concepts that sound relevant but are only tangentially related. For example, when discussing mass incarceration and pretrial detention, bail is of critical importance, but it was not the focus of my survey. Let your plan keep you focused on relevant information. Update it as you go; if you find certain keywords or agencies relevant, incorporate them so you do not lose time later. It is good to go back to the requester of the information during this process, because it's likely you'll need additional clarification as you hone in on the different related issues.

There are no magical fixes, but as GI Joe says, knowing is half the battle.

If you find quick fixes to anything mentioned here, please let me know. These issues are inherent to conducting survey research and a consequence of the way law is drafted and codified. Importantly, do not leave your readers in the dark: tell the reader in the beginning of the survey report of any difficulties you encountered or disclaimers they need to fully conceptualize the survey.

3. Evaluate what you (or your researchers) already know.

Is there any prior knowledge of the states being surveyed? Do you understand the relationship between statutes and regulations? Between regulations and policy documents? For some researchers, particularly law students, this could be their first real foray into statutes and regulations. For a quick primer, see Mary Whisner's *Law Library Journal* article "Some Guidance about Federal Agencies and Guidance." (Read the article at bit.ly/LLJWhisner2013.)

4. Define your key concepts.

Are prisons and jails the same? What do we mean by pretrial detention? Be open to synonyms. If your overall question includes the term "public policies," be prepared to define it. The word policy is often used interchangeably to mean a variety of different things. There are two relevant definitions you may encounter: 1) Policy as a statement of the law; used in this way, the word policy is equated with regulations or statutes. This is policy as a shorthand for public policy; 2) Policy as a further explanation of government regulations and requirements. These policy documents are often referred to as guidance documents, memoranda, bulletins, etc. If there is a definitions section that applies to the relevant laws, use it; let the law define itself for you and help you confirm you're in the right place.

5. Draft a wide variety of keywords.

Different jurisdictions use different terms. You may have trouble starting in a new jurisdiction until you know the terms used. The terms utilized by practitioners can also vary from the actual terms used in statutes. Remember that

keywords can fail, so utilize an index (they still exist!) or another tool, such as a popular name table. The wide discrepancy between states on numerous issues is the main difficulty. As soon as you understand one concept, you may find that it is completely different in the next state. Oftentimes very different words are used to describe the same content. Laws are also organized and administered in different ways. Because of this, you may have to spend time understanding a concept from one state that you will never encounter again.

6. When conducting a regulatory survey, remember the relationship between different types of documents.

In organizing research, keep in mind the relationship between the types of public policies. Statutes are enacted by legislatures. Regulations are promulgated by administrative agencies in accordance with particular statutes and the procedures established by a state administrative procedure act. A statute will not always direct you to related administrative regulations; on the other hand, a regulation should direct you to a statute. Policy documents are further explanations of regulations. Statutes and regulations are laws that are published; policies are not law. Such distinctions are complicated by the subtleties of administrative law, but it tells you that policies are not required to be published in the same way as laws. For more on these non-law policies, see Brian Wolfman & Bradley Girard's *SCOTUSblog* post, "Argument Analysis: 'Interpretive Rules,' Notice-and-Comment Rule-Making, and the Tougher Issues Waiting in the Wings." (Read the blog post at bit.ly/JA20SCOTUS.)

7. Keep in mind the relationship between state and local governments.

When investigating an issue that affects multiple levels of government, research can get tricky. In most states, there are state departments, but there may be county agencies to consider. In our survey, we discovered that some states have uniform corrections agencies that

handle all levels of law enforcement; some states have both state and local institutions. Sometimes only local jails have pretrial detainees; sometimes state and local jails may have pretrial detainees. To what extent does the state institution interact with the local? For corrections, many state departments set minimum jail standards for local jails that are otherwise governed by local officials.

8. Ask for assistance.

If something seems inconsistent or strange, see if an individual from that jurisdiction can answer your question before you spin yourself in circles. If the inconsistency is in your own geographic expertise, rely on your colleagues. The librarians and correctional staffers that fielded my questions were very helpful in my survey planning, for which I am extremely grateful.

Statutes, regulations, and administrative policies are not always easy to find, read, or understand. There are transparency issues related to access and publication of materials, plus confusing phrasing and poor organization of the written law. One of the side effects of the vast amount of written law we have is that we expect there to actually be written law that is accessible to us. A law school is a great environment for conducting a multi-state survey because of the expensive platforms one is generally able to access there. Although every state has its laws online, finding them is not always easy and the quality of search tools varies widely. (A wonderful resource for finding these websites is another multi-state survey, “50-State Surveys of Laws & Regulations: State Statutory & Administrative Codes on the Internet,” from the Franklin County Law Library. (View the document at bit.ly/JA20Franklin.) Ask yourself: Is a 50-state survey realistic in a timely manner without access to expensive databases?

When researching administrative materials, currency is key; often they are not updated as quickly as statutes nor is their publication schedule easily discernible. Another issue is access to policy documents. Once you manage to

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access the material, you need to be able to understand it. The fact that many laws have confusing phrasing and are poorly organized is likely not news to many librarians.

9. Be prepared to take extra steps.

You may need to draft Freedom of Information Act requests, especially in the area of correctional institutions. Depending on the state, little information may be publicly available. You may need to call staff at institutions to receive clarification or ask general questions. While they might be surprised to be asked to actually answer questions about their operations, be persistent. Take extra steps in your own work: you will likely need to be more meticulously organized and careful about how you organize your findings than in other types of research. Does it make sense to include only a statutory citation? What about quotes? Should you note why a section applies? Always consider the needs of the potential audience.

10. Have fun!

Conducting a multi-state survey can be frustrating and complicated, but it stretches research muscles, and you’ll never forget it! Upon telling a co-worker about the idea for this article, she immediately launched into her tales of 50-state surveys. Take what you learn and carry it with you.

The Challenge of Updating

Can a multi-state survey ever be truly up-to-date? I conclude that, no, they cannot. There are two approaches to keeping up to date when you are compiling the research. First, you can set an alert in a database for changes to any of the primary sources that are relevant. The plus-side to this option is that if

you get no alerts, you may be able to feel reasonably confident nothing has changed. This option will only work for materials found in a database that provides alerts. This is likely a better method for long-term updating. A second way of keeping up to date is to set a date to finalize the survey and substantiate all the material at once. There are some obvious practical difficulties with this choice, but if you can schedule the time, it can help you feel confident you are up to date and that all access links are still working. This might be a better method for a one-time project, such as a law review article. You should always prominently indicate to your readers the cut-off date for accuracy and currency.

Despite the labors required by some multi-state surveys, the time spent on these research requests can be reduced by following the tips provided here. While you are almost certainly going to encounter some difficulties in a multi-state survey, remind yourself that that’s just part and parcel of conducting survey research.

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JANET KEARNEY
FOREIGN & INTERNATIONAL LAW
LIBRARIAN
Fordham Law School Maloney Library
New York, NY
jkearney15@fordham.edu

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