

CHAPTER 12 ORGANIZING RESEARCH PROJECTS AND PRESENTING RESULTS

COMMENTS ON THE RESEARCH PROCESS

Defining the issue or issues and focusing your research

When searching for mandatory authority, define your issue fairly broadly. Your goal should be to find every case in your jurisdiction that is relevant to the issue. Use a broad definition to define relevancy - analogize from your facts to similar fact patterns.

The issue may not be firmly decided in your jurisdiction, or the prevailing trend among the jurisdictions may be changing from the status quo in your jurisdiction. Your research should include a search for persuasive authority. Find enough cases in other jurisdictions to understand what the trends are across the country, or to urge that a particular reasoning be adopted by your jurisdiction. Use a strict definition to determine relevancy - look for cases more nearly on point with your facts.

Read cases from your jurisdiction that do not favor your client's side as well as ones that favor your client's position. You cannot ignore the latter; you must figure out a way to deal with them, for example, by distinguishing the facts.

Focusing your search for secondary authorities

Make sure the secondary sources you consult are as up to date as you can find. Both the background information and the citation finding benefits are diluted if you look at sources which are out of date.

If searching for secondary sources online:

- use the Locate (Westlaw) and Focus (Lexis) functions to help you browse
- avoid printing out lengthy documents which may prove to be marginally useful
- try natural language searching first if you are not familiar with the jargon
- use appropriate date and title field/segment restrictions to cut down on the volume of search results
- remember that lengthy secondary sources may be easier to browse in print format

Remember that the most important use of secondary sources is to speed up the process of locating, and enhancing the understanding of, the primary source materials which are the objective of your research effort.

Combining print and electronic research techniques

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Computerized legal research services such as Lexis and Westlaw are extremely valuable tools. The number of legal sources available on the Internet continues to grow at a rapid rate and this is an area that will bear watching as improvements in the various search engines and access occur.

At the same time, even though the full text legal systems have been available for many years, students, faculty and attorneys still make heavy use of the print sources. Some of this relates to differing comfort levels in reading lengthy documents online. Some of the use of print is related to the high cost of electronic services in the practice environment. Unlimited use of Lexis and Westlaw under educational contracts that are funded by the law school serves the purpose of allowing law students to learn the systems in a setting where cost is not a concern. Unfortunately, students often find when they go to a job setting that summer associates or law clerks are prohibited from using the systems at all, or their use is extremely limited for cost reasons. Also, some important materials are not available or are difficult to search in online format. And finally, because the goal of most research projects is to get to a point where one feels confident that all relevant authorities have been found, the best way of accomplishing this is to search in both print and online when they are available. For all these reasons, learning how to use the various formats effectively gives you the best foundation to approach a given research problem. While availability of sources will vary and shortcuts may be necessary, it is important to understand the complete picture so that you can make informed choices.

As has been stressed from the beginning, searching for primary sources, either using print indexes or searching in online case or statute databases without a basic understanding of the terminology can waste valuable time. Secondary sources, either online or print versions, should normally be consulted first. Don't overlook the value of hornbooks and treatises that are not often available in electronic versions.

In general, unless one finds a specific statutory cite in secondary sources, it is often easier to locate statutes in print indexes than in online databases. Because of the specificity of language used by those who draft statutes, framing online search requests can be difficult. Starting with print research to locate relevant statutes is a logical step if the print code is available. If the print index does not yield relevant entries, a search in the online annotated code database would make sense. Occasionally terms that do not appear in the statute text are in the case annotations. If online research is all that is available, natural language searching for statutes may be more helpful than terms and connectors.

Whether print digests or full text databases are more efficient for locating case law varies from problem to problem. Framing online requests that retrieve all the relevant cases while at the same time screening out a lot of irrelevant ones is an art and, in fact, may not be possible depending on the nature of the problem and the terms involved. Relying solely on online case databases or, conversely, relying solely on digests, can result in missing key authorities.

If online research is available, validating cases to make sure they are still good law is almost always more efficient online than in print.

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In the law school environment, Lexis and Westlaw subsidize printing costs, including providing paper and toner. This is another source of contention in law firms, where printing is not free. In addition to the tremendous potential for waste, professors find that students who print large volumes of material often are overwhelmed. Spending a few minutes online identifying the relevant documents as opposed to printing randomly is well worth it. Both systems allow printing of selected pages of documents and this is often more efficient than printing entire sources.

The 15 minute rule

Do not spend more than about 15 minutes in an index or database in which you are not finding anything. Go on to another source and, if you need to, come back to the first source later when you have a better sense of what you may be looking for or different research vocabulary to work with. Keep an accurate research log and be flexible.

STRATEGIES FOR ORGANIZING RESEARCH PROJECTS

Carefully read or review the facts upon which your problem is based before you begin. Make sure you can articulate some version of the issue(s) at the outset, although your version of the issue(s) may evolve as the research progresses.

Create a research plan and record it, possibly in checklist format. This plan may change or evolve as you work, but it can still provide guidance and a checklist for complete research. List both the tools you intend to use and the index terms/searches you will initially use to search them. (Be prepared to add new terms or searches to the list as they are suggested by the sources you consult.)

Your research plan should begin by building on what you already know about the problem or the sources of which you may already be aware. For example, we have discussed the need for background reading if you are thoroughly unfamiliar with the subject. Sometimes you already have a case or statute citation or name. If so, your research plan can build upon it as a starting point. For example, if you have the name or citation of a case, locate it and read it to a) obtain citations to other relevant cases cited in the opinion; b) look at its headnotes to see what topics/key numbers it is indexed under and use those to search the appropriate digest for additional cases; c) Shepardize or KeyCite it to obtain citations to additional authorities; and d) generate possible additional research vocabulary.

When approaching a research tool, spend a few minutes examining its structure so that you can use it most efficiently. A great deal of time can be wasted by plunging into a source before you understand how it is put together. Additionally, for a print source, check to make sure it is up-to-date before spending a lot of time with it. For electronic sources, use the guides or the database descriptions available on Lexis and Westlaw to make sure the database has the material you are looking for.

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Develop a system for recording your research process and product. You can make your original research plan the blueprint for your research log. For each tool you consult, be careful to record:

- the date you consulted it
- whether you looked at pocket parts or supplements and their respective dates
- what subject headings or searches you used, and
- what you found. If you found nothing, record that, so that you will know that you consulted the tool.

Do not be frustrated if you find yourself returning to tools already consulted earlier in the process. You may have in mind different index terms or searches the second time around, as new relevant vocabulary becomes known to you through other sources you find. Just make certain that you record the work you do at each step of the way.

Read the sources you locate as you go along. A common pitfall is to gather stacks of information without reading or processing any of it. There are at least two reasons to read as you go along. First, a case that looks relevant at first glance, or that appears to be so from its summary in a digest or other source, may turn out to be less important than it seems, or even irrelevant. Second, the very nature of legal information and of legal research is that sources refer to each other. You will have leads to follow based on each source you find useful. Also, highlight and/or summarize the sources at the time you first examine them. For cases, you may find it useful to take notes on the facts and holding of each case rather than extensively briefing it.

Be certain that you record all the information you will need to properly cite the primary sources you are using. For example, when recording the citation to a case, make sure you record the court that decided it and the date as well as the reporter cite. For statutes, record the date of the volume and pocket parts that contain the text of the statute.

Validate cases early in the process. Once you have determined that a case is relevant and/or important, use citation tools to verify its precedential status. Shepardizing or KeyCiting will provide the same information, with the additional benefit of citations to subsequently decided cases which develop the legal principle(s) you are researching.

If your research involves multiple issues, at some point you will need to organize your research log accordingly. Sometimes outlining your ultimate written work product helps. List each major point of your analysis/argument and indicate which authorities you will cite to support each. A particular statute or case may figure in more than one part of your outline.

For a complex problem, the organization of your research may be demanding and following through each lead may seem a daunting task. It takes practice to do this successfully, but you will help yourself immensely and minimize time-wasting backtracking if you follow the tips outlined above.

Tips for developing research organization skills

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- 1) Carefully read or review the facts upon which your problem is based before you begin.
- 2) Formulate issue(s) and research vocabulary before starting to look at sources.
- 3) Develop and record a research plan.
- 4) Your research plan should begin by building upon what you already know about the problem.
- 5) When approaching a research tool, spend a few minutes examining its content and structure so that you can use it most efficiently and so you know it is appropriate for your needs.
- 6) Develop a system for recording your research process and product.
- 7) Carefully record all information pertinent to your research. Include dates checked and index/search terms used. Also include information essential for correct citation form.
- 8) Read the sources as you go along.
- 9) Validate cases (using citation tools) early in the process.
- 10) Begin plugging authorities into your topic outline as you go along.

PRESENTING RESEARCH RESULTS TO A SUPERVISOR

The most basic of all lawyers' communication to a supervisor is the oral report: a description of what you've found through research, investigation or analysis. Distilling the essence of your research and analysis in an oral report - simplifying complex substantive rules, forcing yourself to generalize from the facts, etc. - presents much the same problem as whittling a five page letter down to two pages. Learning to handle a reporting conference well is good basic informal practice both for beginning to write and for oral appellate argument (and can also help you in answering questions in class).

The goal is a thorough, complete and timely response to the problem. What your supervisor will evaluate you on is your ability to express the best answer to the issues presented to you, based upon accurate research and the client you represent, in an organized, clear and concise manner.

Questions to ask yourself before presenting your results to a supervisor:

Have I responded to the problem presented to me?

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- a. Have I understood the facts and identified those facts relevant to answering the question?
- b. Have I identified the appropriate issues, or understood the issues presented by the supervisor?
- c. Have I located the best resources which would provide an answer to the question?

Have I used good professional judgment and logic in reaching an answer?

- a. Have I *personally* reviewed all the research sources and fully read all relevant primary law?
- b. Have I analyzed and handled appropriately any authority which would oppose my conclusion?
- c. Have I taken care to function not only as an accurate reporter but as a good interpreter?
- d. Have I considered the client's interests, as expressed by the supervisor?
- e. Have I sorted out all the possibilities and come up with a plan for action, if appropriate?
- f. Would I want this supervisor to depend upon this answer?

Have I been thorough in my research?

- a. Have I planned my research strategy and could I discuss it if required?
- b. Have I used any secondary sources both to familiarize myself with the topic and to gain an overview?
- c. Have I located mandatory primary authority?
- d. Have I consulted persuasive authority, if necessary?
- e. Have I updated the law?
- f. Have I taken sufficient notes to refresh my memory, if necessary?
- g. Could I use my research strategy and notes to write a memo on the topic, if asked?

Have I completed the project within the time allotted to me, or, prior to the end of the allotted time, have I communicated with the supervisor for an extension of the deadline to allow me to be thorough or to revise the project?

- a. The time to ask for an extension, either as to amount of time to spend, or the due date, on a project is not after it's due. You need to obtain your supervisor's permission prior to the deadline.
- b. There are many reasons that deadlines are set, and few good reasons for extending them. Make a habit of meeting your deadlines, both as to the date the project is due and the amount of time you can spend on the project.

Have I plotted out the structure of my presentation?

- a. Is it well-organized:

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1. Have I outlined what I want to say?
2. Does one point flow logically to the next?
- b. Is it clear? Each choice of word, phrase and sentence should be unmistakable in meaning.
- c. Is it concise? A presentation should always strive for materiality, stressing the important points and avoiding equal weight placed on both the significant and the trivial.
- d. Do I understand who my audience is and what it is that he or she wants to hear?

Typically, you're reporting to busy people who want refined conclusions, not rough facts and not a recital of your hunt in chronological order. The way to begin is to give the supervisor the ultimate answer first and then ask the supervisor whether he or she wishes you to go through the logical, *not* chronological, steps by which you researched and reached your conclusion.

Be prepared to be interrupted with questions. You will have to give this presentation as a dialogue: some of these questions will be directed to the issue you're presenting at that moment, and others may be related to matters you intend to cover later in the discussion. The way in which to handle these questions depends upon the type of question. If the question relates to an issue currently under discussion, you will have to answer it then. If the question relates to an issue you intend to cover later in the logical sequence, it may sometimes be appropriate to state that you intend to cover that point shortly.

Finally, never forget that the way in which you communicate orally to a supervisor, a judge, or a client, conveys not only your knowledge and intellectual capacity, but also empathy and trustworthiness. Just prior to beginning your presentation, sit down and think of how prepared and confident you are in your own work. If you have taken good notes, are comfortable with your work product, and have organized your presentation, you will appear more relaxed, in control and can respond to questions intelligently and flexibly.

CONSIDERATIONS WHEN WRITING INFORMAL OPINION LETTERS TO CLIENTS

- Include a summary of the facts upon which your opinion is based. If you lack important facts, obtain them before writing the letter or make clear that they might change your opinion.
- Use of headings to organize your letter is not essential but can often add to both the clarity and the professional appearance of your letter. Many clients like to see the conclusion early in the letter. If you use headings, make sure that there is enough text under each heading to make it worthwhile.
- Whether or not to include citations to authority is a judgment call. Your decision may be based on the education and sophistication of your client or on the nature

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of the legal issue. If you do cite authorities, make as clear as possible what the citations stand for so that the client can locate them if desired.

- Be cautious about language that guarantees a result. An attorney can promise to take certain actions on a client's behalf and may be able to reasonably predict an outcome. However, he or she cannot guarantee a particular result, especially when the matter involves a determination by a third party (e.g. an administrative agency or court.)
- The overall appearance and tone should be professional. The letter may be more or less formal depending on the relationship with a particular client, but an opinion should always have a professional tone.
- Choose words carefully. It sounds better to say that an area of the law is complex than to say it is "confusing."
- Don't restate the obvious. The client should take for granted that your research was careful or extensive.
- Be tactful. Certain issues may be highly personal and sensitive to your client.
- Although you may analyze the issue(s) for your client, try not to let your letter reflect your own thought process and problem-solving.
- Theoretical discussions of the law may contribute to your grasp of the issues and answers, but be cautious in how much of this you add to your letter.
- A letter that is going to a client must be free of typographical, spelling, and grammatical errors.
- It is important to communicate that the law on which your opinion is based may change. Make sure, however, that your "disclaimer" is tactful and fits the tone of the rest of your letter, rather than sounding like language lifted from a form.