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Chapter 12

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. However, each research project is by nature unique, and thus it requires that a distinctive strategy be applied. This chapter explores the ways in which a savvy researcher can take the essential elements of a fresh search, examine answers to some critical questions related to the issue(s) at hand, develop a strategy for approaching the research process that fits the unique problem, and implement that strategy in a cost-effective and efficient way. It culminates in recommendations for organizing the information gathered so that you may convey your findings in a clear, thoughtful, and useful manner. The chapter concludes with tips on how to know when to end your research.

I. 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 in order for the work you do to be thorough. These elements include 1) framing the issues 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 each issue 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 to assure a high quality work product.

B. Ask the Critical Questions

Before spending any significant time conducting research on the issues you have identified, always take a moment to consider the critical questions that will define the contours of your research. Thinking about questions such as the ones listed here at the outset of your project will help to more clearly define the best strategy for the work ahead. While this list certainly isn't exhaustive of the questions that should be asked, 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 strategic approach for an issue that must be delivered within a few hours will look markedly different from the strategy adopted for a problem you have several days or weeks to address. Moreover, because some of the time spent on research may ultimately be billed back to the client, understanding the time you are expected to put into the work can inform the strategy you adopt.

- 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. 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 robust 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 a thing of the past in the workplace. A good research strategy will include a plan to review resources that are relevant, are easily accessed, and fit within 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 includes and 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 some 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 your efficiency and effectiveness.

- What is the appropriate jurisdiction for this problem?

In many instances, it will be fairly clear whether an issue is controlled by state law, federal law, or both. However, you may encounter a problem in which the controlling jurisdiction is not clear. Asking this question at the beginning of the research process can help you recognize whether or not you should spend some of your valuable research time clarifying this matter before spending unnecessary time and money researching your problem in the wrong jurisdiction.

- 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 cause of action arose? Has your law office or firm handled similar cases in the past, and if so are there briefs or filings from earlier cases that might 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 critical questions. If that is the case, write the outstanding questions in your research notes (which will be discussed later in this chapter) and make sure to 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 the act of keeping quality research notes. Good notes provide a visual reminder of your research plan, help track the steps already taken, reflect both the fruitful inquiries and the dead ends you have encountered, and allow space for both process-oriented notes and analytical 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.

Table 12-1 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. An area for reflecting on important considerations from the critical questions asked at the outset of the research process is also provided. Chapter 1 of this book contains a detailed discussion of choosing search terms for your work, 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 al-

Table 12-1. Template for Research Notes

Facts:	
Issue Statement/Questions Presented:	
Critical Questions:	
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 & Key Numbers</u>
Follow-up Questions and Connections:	

ready consulted as well as the references to additional authorities encountered along the way. Equally important is the section at the bottom of the template reserved for analytical notes dealing with the connections between concepts and the questions that remain

unanswered. Finally, useful research notes will include both the date on which the research was conducted as well as 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 re-trace your steps.

By committing to taking research notes, you avoid the tempting habit of printing resources and highlighting relevant sections without really digesting the material you are reading. Putting concepts and connections in your own words and writing them down helps to more firmly situate them in your mind. 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 really understand the research problem at hand.

D. Choose a Strategy That Fits

Once you have asked the critical questions 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 will lay out the steps you plan to take in the research process while being flexible enough to allow for change if new information comes to light.

1. *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 answer 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.

Begin by framing your research issue and developing useful search terms. Ask the critical questions 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. As you examine the primary author-

ities, make sure to KeyCite or Shepardize each one before relying on it for your analysis.

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

2. 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 a regulation 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 help 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 KeyCite or Shepardize the source you have. Use these validation tools not just to verify that the authority is “good law,” but also to help you expand your research. A thorough discussion of both functions of a citator can be found in Chapter 11.

If the primary authority in hand is a case, use the editorial features of Westlaw or Lexis to help you find other, similar case law in your jurisdiction. Chapter 6 covers researching judicial opinions and can provide an overview of the methods for using a single 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 7. Should you find yourself with a regulation in hand, review and follow the recommendations set out in Chapter 9 to help develop your foundation and locate additional authorities.

3. Use 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. Rather than 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. You need not complete all the steps in a particular order, so long as you are careful to complete them.

4. Research with Time Constraints

Time limitations provide another important reason to carefully consider adjusting your research strategy. When pressed for time, the most valuable action to take is to carefully define the issue or question presented. Being very specific about the information you need to gather is the best way to save time and energy and to avoid chasing leads for peripheral issues. Once you have honed in on the precise information you need, then focus on what you already know. If you have been presented with a problem that requires a fresh search, follow the recommendations in Section D.1. 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 Section D.2. above.

E. Cost-Effective Research Methods

Though this chapter has already touched on some of the elements of cost-effective legal research, you should apply a few basic principles to each project you undertake to maximize your effectiveness for the research dollars you spend.

1. 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 have a significant impact on 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, the ability to browse a greater number of secondary sources in an inexpensive context is key. Print sources do not have an hourly or transactional cost associated with them, 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 firm library, find out what kinds of secondary sources are available in print. Consider access to a nearby state or county 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 electronic research, there may be times when print research would take much longer than a comparable search in a fee-based electronic resource. As you become a more experienced researcher, you will learn to identify these instances. Shepardizing is one task that is faster and far more comprehensive when done electronically. 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.

2. Consider Free Sources

The ubiquity of fee-based database access during law school leaves many novice researchers with the mistaken impression that a fee-based platform is essential to get access to trustworthy, current, or editorially enhanced legal information. In fact, there are a number of government, non-profit, and other online resources that provide easy access to high quality, trustworthy, and even official or authenticated material. Many state bar associations have relationships with vendors such as Fastcase or Casemaker that allow free access to those who are members of the bar. At the date of writing, the Oklahoma

Bar Association provides free access to Fastcase for its members. Additionally, resources such as the Oklahoma State Court Network,¹ Cornell's Legal Information Institute,² and the Government Printing Office's Federal Digital System³ (FDsys) 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 offered in this chapter more concrete, consider the following hypothetical, first introduced in Chapter 1, and sample research strategy. Your client is a recently widowed woman in Tulsa, Oklahoma. Prior to his death, her husband consulted with a local attorney who re-drafted his will. The new will provides that a considerable portion of his estate be left to a non-profit organization on whose governing board the drafting attorney currently sits. Your client does not want this new will to be honored and asks if there are grounds for invalidating the will. You have been given one week in which 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 12-21 lists the strategic steps you might take to complete the assignment.

II. Organization

While much of this chapter emphasizes the organization of your research for maximum efficiency and effectiveness, also consider or-

1. Oklahoma State Court Network, <http://www.oscn.net>.

2. Cornell's Legal Information Institute, <http://www.law.cornell.edu/>.

3. FDsys, <http://www.gpo.gov/fdsys/>.

Table 12-2. Sample Research Strategy

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1. Frame the issues presented to the best of your ability and write what you develop at the top of your research notes.
 2. Review critical questions, 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 make note of information already in your possession that may help you answer the question.
 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 is an excellent ALR annotation on undue influence in will drafting, and AmJur contains a significant amount of valuable information as well.
 5. Note the primary authorities you found in both the discussion and footnotes of the secondary sources consulted. In this instance, most of those authorities will be cases.
 6. Skim the cases, and note important concepts, rules, or additional primary authorities such as statutes. Then go back and carefully read and consider the authorities that are most relevant to your problem.
 7. KeyCite or Shepardize those primary authorities on which you intend to rely both to assure that they are “good law” and to expand your research.
 8. Note follow-up questions and summarize the connections you have made.
 9. Follow up on any outstanding questions, organize your findings, and prepare to draft your memo.
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ganizing the results of your research to help you develop your analysis. This includes organizing the secondary sources and primary authorities on which you will base your assessment of the legal situation, as well as organizing the ultimate analysis of the problem.

A. Organizing Authorities

In organizing the authorities themselves, consider making a print copy of every primary authority 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 analytical notes in the margins or cross-reference your research notes in a way that is clear and meaningful to you.

It is much 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 contributed to your understanding of the legal context or provided a particularly useful list of references to relevant primary authorities. When in doubt, err on the side of retaining more material in print 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 of authorities by the type of authority, by the subject matter addressed, or by chronology. Any of these organizational schemes may be a good choice, depending on the problem you are researching.

B. Organizing Analysis

As with research notes, there are a number of ways to organize the analysis of a research problem so that the work you have done can be easily reviewed and summarized. The format you choose is not nearly as important as the fact that you create some kind of document reflecting your work. One method for organizing your findings is offered in Table 12-2. Again, the client is the widow and the issue is the undue influence of the attorney who drafted her husband's will, described as an example earlier in this chapter.

An analysis chart such as the one in Table 12-2 helps to identify the authorities that relate both to the overarching questions in your research as well as 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 help 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.

Table 12-3. Organizing Research Results

Issue presented: <i>Are there grounds to contest a will where the will designates as a beneficiary a non-profit organization on which the will's drafter (who was also the decedent's attorney) sits as a board member?</i>			
Sub-issue #1: <i>What are the possible grounds for a will contest in Oklahoma?</i>			
Relevant authority	Summary of authority	Client facts	Assessment
58 O.S. § 61	Sets out the method and grounds for a will contest. Grounds include testator's lack of competence, as well as external duress, menace, fraud, or undue influence.	Client wishes for the will to be denied probate.	Assuming undue influence by the drafting attorney can be demonstrated, our client may be able to move forward with a will contest.
84 O.S. § 43	Affirms that a will procured by undue influence may be denied probate and that the revocation of a prior will through undue influence can be declared void.	Decedent had an earlier will that was revoked when the new will was drafted.	Revocation of earlier will upon the recent re-drafting of the will in question may be declared void if undue influence is shown.

Table 12-3. Organizing Research Results (*continued*)

Sub-issue #2: <i>What constitutes undue influence in the procurement of a will?</i>			
<i>White v. Palmer</i> 498 P.2d 1401	Undue influence can be shown either by direct testimony or by review of all the circumstances surrounding the procurement of the will. Circumstantial evidence includes the relationship of the parties, opportunity for influence, and the favorable terms of the will, among others.	Drafter of the will may benefit from the disposition of the new will. Drafter had opportunity and relationship to influence decedent.	While the facts do not indicate whether there is direct evidence of the exercise of undue influence, it is possible to show undue influence sufficient to deny probate by reference to circumstantial evidence.

III. 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 an obvious and 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 one you must develop 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 12-3 may help you de-

termine 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.

