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“They’re Practically Learning”: Pointers on Practical Legal Research Exams

By Steven R. Probst and Michael J. Bushbaum

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The pages of this publication have, in the past, addressed a question that sometimes plagues those of us responsible for legal research instruction: how can we tell if the students are getting it? After months of explaining the types and sources of legal authority and how and when to use each, have students actually learned the techniques we’ve presented and, more importantly, can they correctly apply them? Further discussion among legal research instructors on this topic inevitably concerns what type of assessment is most likely to provide the answer to this question. The objective examination has been taken to task for its failure to accurately measure students’ understanding of the process of legal research.¹ The practical or skills-based examination has been proffered as an alternative approach,² but what exactly is involved in writing and administering such an exam and would it complement or replace the traditional objective instrument?

These were questions we at the Valparaiso University School of Law faced in recent years as we recognized the need to create and implement a

practical exam in our 1L legal research course.³ Two observations led to the recognition of this need. The first was that the new “collaborative learners” we found ourselves teaching were often too collaborative on weekly assignments and we found ourselves doubting whether each student had encountered and mastered basic concepts

¹ See Judith Rosenbaum, *Why I Don’t Give a Research Exam*, 11 Perspectives: Teaching Legal Res. & Writing 1 (Fall 2002) (“The problem with [objective exams] is that they teach memorization ... [T]he essence of legal research is a search for understanding in which finding and thinking continually cross-fertilize each other and these mental processes cannot be emulated by an objective test.” *Id.* at 4).

² See Brian Huddleston, *Trial by Fire ... Creating a Practical Application Research Exam*, 7 Perspectives: Teaching Legal Res. & Writing 99 (Spring 1999). For an integrated approach, see Mary Brandt Jensen, “*Breaking the Code*” for a Timely Method of Grading Legal Research Essay Exams, 4 Perspectives: Teaching Legal Res. & Writing 85 (Spring 1996) (advocating the use of a research journal-type essay exam graded through a coding system in order to speed the grading process and ensure consistency in exam scoring).

³ In using the term “practical exam,” we are referring to a graded exercise in which students demonstrate hands-on, skills-based knowledge of a wide variety of print and online legal research sources covered during the first-year legal research course under timed conditions. At Valparaiso University School of Law, legal research is a stand-alone, one-credit course taught by four of our librarians during both semesters of the first year. Though our curriculum is now being integrated, the course has traditionally covered print sources only during the fall semester.

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involved with each resource. The second observation was that, absent individual experience with each legal research source we taught, our objective examination did not adequately ensure that students possessed the practical research skills we wanted them to have upon completion of our course.⁴ While objective exams are beneficial in making sure that students understand basic research principles, they have difficulty conveying a student's understanding of the interrelationship between sources or if the student can connect a specific research need with a source that can fill that need.⁵ These are things at which the practical exam can excel—if you are willing to expend the time and energy necessary to create, implement, and continually revise one.

Creation of the Exam

We set about creating the first version of our practical exam in the spring of 2003. After reviewing the methods employed by others who have utilized practical examinations,⁶ we decided that we would have to create our own model. This was due in large part to the fact that others had

personally accompanied students throughout the library while they completed the exam⁷—something that we felt wasn't possible in administering the exam to 211 students. We decided instead to have students sign up for a time slot with an available librarian, take the exam on their own under time constraints, and upon returning to the librarian's office, be immediately informed of their success or failure.⁸

While the questions on the inaugural run of our practical examination were heavily influenced by both deadlines for the project and the content we were teaching that semester, the concept we adopted is one that has survived numerous revisions. First, we wanted our exam to contain compound questions, with each subpart of the question building on the one before it in order to both demonstrate the interrelatedness of sources and measure students' understanding of this concept. Second, to eliminate the multitude of answers we could expect if our starting point involved search terms and indexes, we wanted students to all be given a common starting point. Focusing on primary authority, we wrote a third of the questions about federal statutes, starting students with the name of an act they could locate in a popular name table. The next third of the questions involved federal regulations, the starting point being the statutory authority for the regulation. For the final third, we started each question with the name of a case, hoping that students remembered being told about each digest's table of cases.⁹ While students would

“ [T]he questions on the inaugural run of our practical examination were heavily influenced by both deadlines for the project and the content we were teaching that semester. . . . ”

⁴ See Rosenbaum, *supra* note 1 at 5. The author states:

The problem with the objective research exam is that it is one-dimensional. The answer is there if the questions are multiple-choice, true-false, or matching format, or the answer can be recalled from memory if the questions are short answer. This type of exam does not mirror in any way the trial-and-error aspects of actual research. It fails to capture the internal feedback loop that comes from reading and analyzing the various sources.

Id. However, we still view the objective exam as an essential component of our course and give one at the end of each semester to ensure that students have committed basic, essential research concepts to memory.

⁵ These are essential skills that are lacking among many law school graduates. In a recent survey of large Chicago law firm librarians, 60 percent of those responding were dissatisfied with new attorneys' abilities to research effectively and efficiently, while 66 percent felt the new attorneys' skills were lacking in terms of being able to efficiently locate relevant sources. Mary Rose Strubbe, Keith Ann Stiverson, Sanford Greenberg & Tom Gaylord, Presentation at the Symposium on the Future of Legal Research at Chicago-Kent College of Law: Presentation of Survey Results (May 13, 2005).

⁶ Our initial efforts in creating a practical exam were particularly influenced by a presentation given by Pamela Rogers Melton from the University of South Carolina at the 2002 AALL Annual Meeting in Orlando, Fla., entitled Practical Legal Research Exams: Making the Connection Between Theory and Practice (July 21, 2002).

⁷ Pamela Rogers Melton, *A Lesson in Exam Building: One Law Librarian's Mission to Create a Practical Legal Research Exam*, 8 AALL Spectrum 10, 31 (February 2004); Videotape: Practical Legal Research Exams: The Connection Between Theory and Practice (Pamela Rogers Melton 2002).

⁸ Our experience suggests that independent work can be sufficiently guaranteed by utilizing an honor code and placing time constraints on the exam.

⁹ During the first administration of this exam, given in the spring semester when access has traditionally been given to Westlaw® and LexisNexis® at Valparaiso, students could also have searched a title field or segment to locate a case. Since that time, the practical exam questions involving cases have been given only during the fall semester and students are restricted to print sources only.

“All of our questions concluded by testing the student’s understanding of the concept of authority verification.”

randomly choose an exam question involving only one type of primary authority, we hoped that knowledge displayed regarding one type of authority would be representative of their knowledge of the other types of primary authority.

The remaining subparts of each question then built on the common starting point provided in the first question. For example, each case authority question had students locate a headnote within their case, identify the West topic and key number from the headnote, and use that topic and key number to locate a specific case from another jurisdiction. All of our questions concluded by testing the student’s understanding of the concept of authority verification. A sample question then looked something like this:

- a. Provide a complete citation to *Cochran v. Phillips*, a case arising in Indiana.
- b. Provide the West topic and key number for headnote # 4 in *Cochran*.
- c. Using this topic and key number, locate and cite a 1972 New Jersey Supreme Court case holding that the owner of a horse is not liable without fault for damage done by the animal when unattended on a public highway.
- d. Has *Cochran* from question (a) ever been cited in the *Indiana Law Review*? If so, provide the cite.

From this single example involving case authority, it becomes easy to see how a practical exam ensures that every student understands a few basic yet essential research concepts such as which digest to consult for a particular jurisdiction, how to use a table of cases, how to locate headnotes and topic and key numbers, how the topic and key numbers can be utilized in other jurisdictions, which source to consult for citations to an authority, and how to use the chosen authority verification tool. Instructors can also be assured that these students, without being provided any context, are able to link research needs with sources they have learned about and recognize how these sources relate to one another. This is the primary benefit of the practical exam.

Application of the Exam

As others have noted, an early hurdle that needs to be cleared in administering a practical exam involves the complications of scheduling the exam to accommodate both the students taking the exam and the librarians giving it.¹⁰ Not only must the 1L class schedule be carefully checked, but also each librarian’s schedule, to make sure that enough exam slots are provided to ensure each student has at least one, if not multiple opportunities, to take the exam if he or she is unsuccessful on his or her first attempt.¹¹ We eventually solved these scheduling dilemmas, settling on six time slots per librarians giving the exam each afternoon over a three-week time period, with starting times staggered by 10 minutes. Students then signed up to take the exam as their schedules permitted with any available librarian. At the appointed time, students were to report to the chosen librarian’s office where they would blindly draw an exam question from a stack of questions printed on colored card stock.¹² After the librarian noted the question number and starting time, students were then given an hour to go out into the library and complete the open-book exam.¹³ Answers were to be typed, if time permitted, and submitted on a separate sheet of paper with citations in proper *ALWD Citation Manual* format.

In order to keep ourselves out of the dean’s office were anything to go horribly wrong, our first practical exam was graded on a pass/fail basis with students receiving instant feedback upon

¹⁰ See Huddleston, *supra* note 2 at 101; Melton, *supra* note 7 at 11.

¹¹ We have learned that the minimum number of time slots that must be provided is one-and-one-half times the number of students taking the exam.

¹² Colored card stock is beneficial both in making students in the library taking the practical exam easily identifiable and in ensuring that questions can be reused in the future.

¹³ Again, time constraints help ensure that materials utilized during the exam serve only to remind students of how to approach a question, not provide answers to students who haven’t prepared for the exam.

completion of the exam. We decided in advance that students had to get each subpart of the exam substantially correct in order to pass.¹⁴ Success in doing so was met with our congratulations and the students' satisfaction that they had finally completed legal research, while failure of any subpart meant signing up to take the exam again after waiting a designated period of time. Students simply had to pass the examination one day before final grades were due in the course.¹⁵ While we were all a little exhausted when the last student had finally passed the exam, it was easy to see that our experiment had been successful. Students had actually been studying for the exam and in our offices asking questions to test their understanding—a marked contrast from previous semesters when we had given only an objective exam. After a little rest on our part we resolved that, in addition to our objective exam, we would give a practical exam in both the fall and spring semesters—but not before undertaking some significant revisions of the process.

Revisions, Revisions, Revisions

Since the spring of 2003, we have created and continually revised separate versions of the practical exam for both the fall and spring semesters. Although we have now integrated our curriculum to include both print and electronic

sources in both semesters, the fall semester examination, the direct descendent of our inaugural exam, is still restricted to print sources only.¹⁶ We have, however, made important changes to the fall exam. For instance, the authority verification question (part d from the example above) now requests information that is time or court certain rather than asking for the most recent citation or other information that is subject to change.¹⁷ This eliminates the burdensome process of checking every question before the exam is administered each year to make sure answers have not changed—something we failed to consider when we first created the exam.¹⁸

Another important change to the fall examination was to have all students answer questions involving the same type of primary authority. On the trial run of our practical examination we found that having case, statute, and regulation questions produced inequitable results. Specifically, we learned that the students with case authority questions were much more likely to pass the examination on the first try than students who randomly chose statute-related questions, and both of those groups of students were more likely to pass than the poor souls who drew questions based on regulatory authority. All questions on the fall examination are now case-related.

Statutes and regulations have since moved to the spring semester version of our practical examination, on which students may use any print or electronic source. This exam, while much more

“We decided in advance that students had to get each subpart of the exam substantially correct in order to pass.”

¹⁴ “Substantially correct” has come to mean that *ALWD* citation does not have to be perfect so long as one could locate the answer provided and that this information answers the question asked. Note that when multiple librarians are involved in administering the exam it becomes difficult to ensure that the exact same passing standard is being applied by each librarian. Any perceived imbalance in this regard will spread like wildfire between the students who will inundate the schedules of librarians viewed as being “nicer.” For this reason, we have found blind sign-ups to be beneficial, with the librarians for each time slot announced only on the day of the exam.

¹⁵ As noted, the scheduled exam period, which included daily sign-up times, lasted only three weeks. However, students who failed to successfully complete the examination during this time period were permitted to independently schedule examination times with a librarian until they had passed. One student took particular advantage of our leniency in this regard, completing the examination the day before final grades were due—two months after the practical exam was first given.

¹⁶ This is due in large part to our commitment to teaching print resources, ensuring that students understand basic concepts in print before moving on to electronic databases.

¹⁷ Part d from the example question provided earlier now reads: “The point of law discussed in headnote #2 of the *Cochran* case from question (a) above was followed in a 1992 decision of the Indiana Court of Appeals. Provide a complete citation to this 1992 case.”

¹⁸ Instead, revising and updating questions involves both identifying problematic questions as the exam is being administered and having research assistants work all of the exam questions over the summer, comparing their responses to the answer key.

“One of our top priorities was to properly motivate students to prepare for and succeed on the exam, which ultimately reduces the burden on librarians giving it.”

involved than the fall practical, still follows our basic principles of having interrelated questions and common starting points. It begins by requiring students to find several pieces of information about a specific statute, then having them locate and conduct a similar exercise with a regulation. The exam concludes with a brief question involving legislative history, another subject covered during our spring semester. Because print or electronic sources may be used, a suggested source for answering each question is provided in each question so that answer keys do not have to specify all possible answers.¹⁹

A representative question from our current spring practical examination would be as follows:

- A. Find the Brady Handgun Violence Prevention Act using the Popular Name Table of the U.S.C.S.
 1. One of the codified sections of this Act deals with exceptions. Cite the 2002 session law that amended this section.
 2. One of the codified sections of this Act deals with acts that are unlawful. Give the appropriate *ALWD* cite for this section.
 3. Using LexisNexis and the section from b, find and cite the 1998 United States Supreme Court decision that has cited this section of the Act.
- B. Using LexisNexis, locate and cite the regulation(s) governing noxious weed seeds.
 1. Locate and cite the authority under which the regulation in 5B was

¹⁹ Allowing students to use any source to answer an exam question will sometimes produce difficulties for the librarian grading the exam as print and electronic sources are not always consistent. However, giving students a recommended starting point helps alleviate these problems. Should students select a different source and find a different answer, librarians are often able to either check the alternate answer immediately using Westlaw or LexisNexis or notify the student later in the day as to their success or failure after retracing the student's steps in print sources.

promulgated. If more than one citation is provided, list only the first one given.

2. Locate and cite the location in the *Federal Register* where the 2000 amendment to the regulation in 5B is found.
3. 12 C.F.R. § 337.3 concerns the limits on extensions of credit to officers, directors, and shareholders of insured banks that are not a member of the FDIC. Cite a 1984 case arising in the 6th Circuit that cites this regulation.

C. Using *LexisNexis Congressional* or *LC Thomas* or the print *Congressional Index*, find and cite the introduced version of the bill from the 103d Congress on the Alvaro De Lugo Post Office.

These questions are much more time-consuming to write than the fall semester questions. However, we have enlisted the aid of student research assistants to help us with this process. With this help, we now have enough questions for both the fall and spring practical examinations to give every student taking the exam a different question. We have learned, however, that research assistants must be carefully guided in this process to ensure that disaster does not accidentally follow. For example, we once discovered that a research assistant had used an online database to write questions for the fall print-only exam. This would not have been so bad had the library contained either the regional or state digests students needed to be able to answer these questions (it didn't). Fortunately the problem was discovered several days before the exam was to be given, leaving time for some last-minute question revision by librarians.

Some of the most important changes we have made involve the administration of the exam rather than the exam questions. One of our top priorities was to properly motivate students to prepare for and succeed on the exam, which ultimately reduces the burden on librarians giving it. To accomplish this we have done away with the pass/fail format of the exam

and now grade it instead with a declining point total of 50 points for successful completion on a first try, 45 points for a second try, and 40 points for three or more tries.²⁰ This has definitely encouraged preparation on the part of the students and decreased the number of time slots we have needed to make available for the exam. As a result, rather than giving students until the end of the grading period to complete the practical, the examination period now ends after three weeks without exceptions.

Another revision that we have made in administering the practical is to change the way in which we view a missed subpart of the exam. While we still require that students get each subpart of the exam substantially correct in order to pass, failure of a single subpart no longer means that students have to wait to retake the entire exam on another day. Instead, a missed subpart is viewed as a teachable moment where students, who have expended considerable effort on a series of related questions, are properly motivated to understand where they went wrong and to correct their mistakes. In such cases students are given a few gentle reminders as to where they strayed during their first attempt, and provided an immediate opportunity to return to the library with a fresh clock to answer only the incorrect portions of their exam for a reduced point total. This scheme benefits students by allowing them to retake only a small portion of the exam rather than a completely new question, and also benefits librarians by substantially reducing

the scheduling difficulties that can be created when a number of students have to take the examination multiple times.

Practical[ly] Believers

Without question, we have become firm believers in the value of the practical exam as a means to ensure each student's understanding of central research concepts that are difficult to test in our traditional, objective final exam. Additionally, given the level of personal interaction between students and librarians that occurs during a practical exam, this type of exam is much better poised to identify gaps in students' understanding as well as possible gaps in our teaching methods. Admittedly, creating and administering a practical exam takes a great deal of time and energy, and a practical exam will always need revision. But this burden pales in comparison to the combined effort spent over the course of a semester teaching research and seems to be the best method of ensuring that efforts in instruction have not been wasted.

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²⁰ Some experimentation with point totals may be necessary to find a total that will properly motivate students without over-penalizing those who nearly successfully complete the exam on a first try. Having a lower limit on the point total also benefits, while still penalizing, students who may have to retake the exam several times. Often, these students learn a great deal from the experience without being unduly harmed by their grade on the exam. Our practical examination has consistently been worth approximately 10 percent of students' final grades, though we will be changing the point totals for completing the exam on two attempts to 40 points and three or more attempts to 30 points beginning in the fall of 2006 to encourage even greater preparation for the exam.