

Raising

the Bar

Preparing students for legal research questions on the bar exam

By Maureen Cahill

Program A-5: “Legal Research Questions on the Bar Exam: Preparing Our Students”

Presenters: **Mary Ann Neary**, coordinator and speaker, Boston College Law Library; **Filippa Marullo Anzalone**, Boston College Law Library; **Patricia A. Cervenka**, Marquette University Law Library, Sensenbrenner Hall; **Erica Moeser**, National Conference of Bar Examiners; **Jane O’Connell**, University of Texas, Jamail Center for Legal Research; **Mark Sullivan**, Boston College Law Library; and **Sherri Nicole Thomas**, University of New Mexico Law Library.

For many years, law librarians and others have actively advocated the inclusion on the bar exam of questions testing proficiency in legal research. This movement gained momentum from the work of AALL’s 2005–2006 Special Committee on Fostering Legal Research as a Subject Specialty, largely because it resulted in an active collaboration between the committee and the National Conference of Bar Examiners (NCBE). Many interested parties think that a revision of the bar exam to include testing for legal research skills is now likely.

Consequently, I considered this year’s Annual Meeting program “Legal Research Questions on the Bar Exam: Preparing Our Students” both timely and important. I was especially intrigued because the first speaker was Erica Moeser, current president of the NCBE. Moeser immediately dispelled any doubts I may have had about her position on including legal research as a subject tested on the bar exam, announcing that it was her pleasure to “preach to the choir” on the issue.

Evolution of the Bar Exam

Moeser gave a quick overview of the purpose of licensing exams, emphasizing that they serve as consumer protection devices. The content of the bar exam reflects the prevailing view of what skills a new lawyer should possess before he or she begins practice. The multistate bar exam (MBE) has slowly evolved from simple testing of memorized legal facts to its current form, in which the questions reference a series of vignettes. Bar examiners are working to create tests that require candidates to demonstrate an ability to work with legal information in the context of real world problems.

Moeser cautioned that one of the primary roadblocks to the inclusion of legal research on the bar exam is uncertainty about how best to test for research proficiency in the closed environment of the exam. At this point, the most realistic option is that the continuing evolution of the MBE will include the addition of both civil procedure and legal research as subject areas tested. However, bar examiners will not make such major changes in the MBE without time to prepare and assess possible questions. The expected timeframe for an overhaul of the MBE to include legal research is three to five years.

Academic Perspectives

After offering this picture of the possible future for legal research questions on the bar exam, Moeser turned the session over to several academic librarians and directors currently teaching or

supervising specialized or advanced legal research courses. The instructors addressed two questions: the role of their courses in preparing students for the practice of law and possible bar exam questions, and the methods they use to assess student performance.

Sherri Nicole Thomas of the University of New Mexico Law Library teaches a specialized legal research course in Indian Law Resources. The course began as a complementary course to a seminar in Indian Law and focused on academic research and writing, but Thomas has broadened it to include practice-oriented materials and problems. The complexity of Indian Law—a result of conflict and interaction among many jurisdictional levels—makes this specialized research course ideal for helping students appreciate the broad universe of legal research. Working to understand not just the many sources of law but also the manner in which they work together forces students to connect skills just as practicing lawyers must do.

Thomas enjoys an institutional setting that should provoke envy from other legal research instructors. First, since her course is generally taken by students also enrolled in an Indian Law seminar, she can augment her own assessment of student progress by discussing their performance with the seminar faculty. In addition, because Indian Law is a subject area included in the New Mexico portion of the bar

exam, students have a special incentive to enroll in her course.

The University of Texas offers a variety of upper-level specialized legal research courses. Each is limited to 25 students, and there are always waiting lists. Jane O’Connell of the Jamail Center for Legal Research teaches courses in intellectual property resources. By focusing on practitioner skills and requiring students to examine the interaction of legal sources, her courses emphasize legal analysis. Students learn not just how to find legal information but also ways to use it and to make critical judgments about it.

Improving Advanced Legal Research

Two advanced legal research instructors, Mark Sullivan and Mary Ann Neary, both from the Boston College Law Library, began their portion of the program by setting out a theoretical basis for the importance of advanced research instruction. Borrowing from Benjamin Bloom’s taxonomy of learning, Sullivan described introductory legal research courses as necessarily focusing on Bloom’s lower order skills—remembering, understanding, and applying information.



Students are introduced to legal resources and given the opportunity to use them just enough to begin understanding their importance. Advanced courses in legal research offer the opportunity to move on to the higher levels of learning—analyzing, synthesizing, and evaluating knowledge. Students are required to think through the reasons why they should choose particular resources and to scrutinize the context in which legal information exists. In this analysis, advanced legal research courses are a crucial follow up to first-year research instruction. Further, they offer vital preparation for the practice of law.

Nearly continued by describing the system they use to evaluate students. The class begins with students submitting a self evaluation after a discussion of the many skills demanded in the practice of law. Then, throughout the course, the instructors give frequent, ungraded quizzes. The final, formal evaluation is an exam with a blend of multiple choice and short answer questions. In every instance, the question is followed by the requirement to explain why the answer was chosen. In this way, students must demonstrate that they understand how a resource's content applies to a problem.

The program ended with library directors Patricia Cervenka of Marquette University Law Library and Filippa Marullo Anzalone of Boston College Law School. Each described her view of the institutional ramifications of the increased demand for advanced and specialized legal research instruction that would inevitably follow the addition of legal research as a subject area tested on the bar exam. Both directors come from institutions where upper-level research instruction has long been a valued part of the curriculum. They spoke with one voice, describing teaching as a basic and natural aspect of librarianship. Anzalone passionately advocated offering librarians the creative and professionally satisfying work of teaching as a means to realize the Jesuit educational mission of imbuing lives with joy and fulfillment.

In my view, this program was a great success. I enjoyed getting the inside scoop on the development of the multistate bar exam and the likelihood that legal research will be added as a subject on the test. Every legal research instructor who spoke gave me perspective, ideas, and questions to carry into my teaching opportunities. In fact, the entire session would have been worthwhile had it contained nothing of value except Anzalone's stirring closing defense of librarians as teachers. Occasionally, what I need most is this affirmation and inspiration. Even the audio of this program should offer a bit of both to the listener. ■

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