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Hitting the Mark? AALL Legal Research Competencies: From Classroom to Practice

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HITTING THE MARK?

AALL LEGAL RESEARCH
COMPETENCIES: FROM
CLASSROOM TO PRACTICE

BY GAIL A. PARTIN AND SALLY H. WISE



The American Association of Law Libraries (AALL)—through the support, expertise, and leadership of its members—has played a leading role in advocating for legal research standards and addressing the need for articulated competencies. The first of three AALL task forces assembled to create and promote legal research competencies was appointed in 2010. AALL has not been alone in its understanding of the need for legal research standards. The *MacCrate Report* from the ABA Task Force on Law Schools and the

Profession, the *Carnegie Report* from the Carnegie Foundation for the Advancement of Teaching, the “Boulder Statement on Legal Research Education” from the Boulder Conference, and finally the *Report of the Outcome Measures Committee* from the ABA Section of Legal Education and Admissions to the Bar have all called for improvements in legal research abilities and for concrete measures of competency. Individual librarians and legal research programs have also announced competencies required in their courses or programs.

At its July 2013 meeting, the AALL Executive Board approved *Principles and Standards for Legal Research Competency (PSLRC)* and its accompanying webpages. The drafting committees drew on members’ deep involvement in legal research within academia, law firms, the courts, government, and other related settings as well as scholarly literature indicating that research competency directly impacts professional efficiency and effectiveness. The *PSLRC* provides detailed definitions of research competencies that can be applied to all stages of a law student’s and a lawyer’s career. Four critical areas emerge for the application or integration of research competency standards: learning outcomes, formal instruction, assessment and audits, and performance evaluation.

Defining Proficiency

What are AALL’s *Principles and Standards for Legal Research Competency* and how can law firms, law schools, the courts, government, and other related settings use them to improve research proficiency?

The *Principles*, which are broad statements of foundational, enduring values related to skilled legal research, are:

- I. A successful legal researcher possesses foundational knowledge of the legal system and legal information sources.
- II. A successful legal researcher gathers information through effective and efficient research strategies.
- III. A successful legal researcher critically evaluates information.
- IV. A successful legal researcher applies information effectively to resolve a specific issue or need.
- V. A successful legal researcher distinguishes between ethical and unethical uses of information, and understands the legal issues associated with the discovery, use, or application of information.

The *Standards* provide a set of more specific applications of those norms or habits that demonstrate one’s commitment to and attainment of the principles. The *Competencies* are activities

that demonstrate knowledge and skills and provide concrete measures or indicators of successful achievement of the abilities required to meet the standards. There are 5 principles, 17 standards, and 54 competencies.

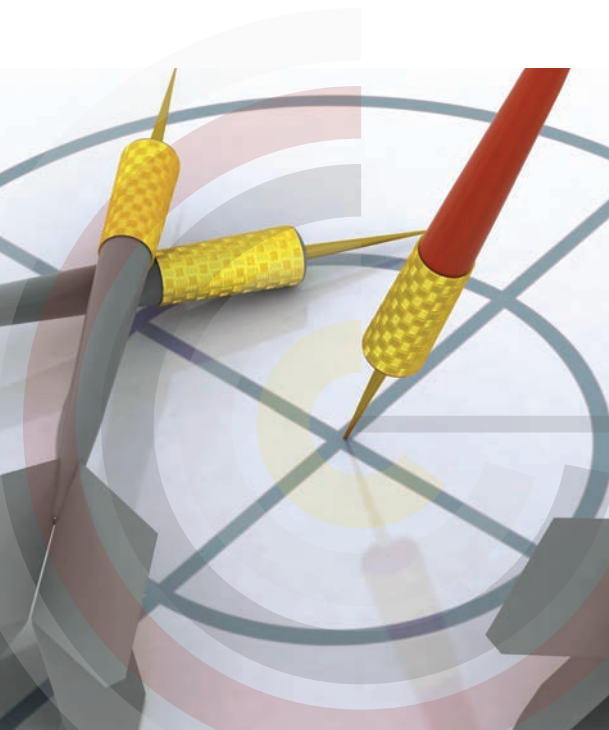
Implementing in Curriculums

While the *PSLRC* provides 54 research competencies that can be applied to all stages of a law student’s and lawyer’s career, the University of Florida Law Library developed nine core research competencies for their first-year legal research course. These competencies

AALL2go EXTRA Watch the “Creative Assessment: Connecting Legal Research Training and Instruction to Results” program at bit.ly/AALL15Assessment.

AALL 2016 ALERT

Don’t miss Barbara Gabor, Catherine Lemann, and Gail Partin’s session “Research Competencies: From Classroom to Practice,” Sunday, July 17 from 2:30 p.m.–3:30 p.m. For more information visit bit.ly/AALL16Competencies.



The *PSLRC* are as equally relevant to practice environments as they are to law schools. They facilitate curriculum/competency planning across the educational spectrum.

are: (1) demonstrate the ability to interpret contemporary legal citations (the ability to identify a citation and its jurisdiction); (2) given a legal citation to contemporary U.S. statutes and case law, demonstrate the ability to find the full text of the case or statute; (3) given a statute, demonstrate the ability to use annotated statutes to find cases interpreting the statute; (4) given a case, demonstrate the ability to determine whether a holding in a specific case is still good law; (5) given a legal topic, demonstrate the ability to identify secondary sources that would prove valuable in researching the topic; (6) using the topic and key number and headnote systems, demonstrate the ability to search for a case in a specific jurisdiction; (7) demonstrate the ability to create a research plan; (8) demonstrate the ability to find dockets, briefs, complaints, etc.; and (9) demonstrate

knowledge of legal information finding tools and methods (e.g., terms and connector searching, natural language searching, indexes, annotations, and legal classification systems such as headnotes), as well as the ability to identify their strengths and weaknesses.

Law firms are also designing core competencies for multiple purposes. According to Deborah Epstein Henry's 2010 book *Law & Reorder: Legal Industry Solutions for Restructure, Retention, Promotion & Work/Life Balance*, published by the ABA, "firms are moving away from lockstep compensation and evaluation systems toward merit-based systems of competencies and levels."

Typical practice competencies might encompass a scaffolded framework similar to the following, beginning with the new associate level:

One Month Competencies

- Have a basic understanding of Bloomberg, LexisNexis and Westlaw contract pricing.
- Understand what library/research staff can do to assist associates in research projects.
- Be aware of the issues presented and need for confidentiality in contacting outside agencies or vendors to assist in research needs.

Three to Six Month Competencies

- Be aware of the authoritative sources in his/her practice area.
- Understand when to use web resources and when to turn to fee/vetted/trusted legal sources.
- Understand basic case/statute/patent finding using case-pulling widgets.
- Understand KeyCite and Shepard's.
- Set up relevant/necessary access to appropriate mobile research apps.
- Be aware of issues/concerns with using outside vendors.

One Year Competencies

- Understand the basic issues of cost control.

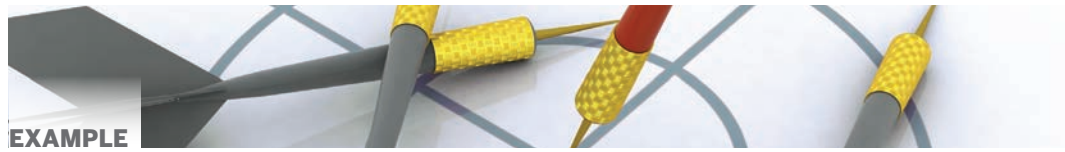
- Understand the importance of using secondary resources for initial research.
- Understand options to get up to speed on a new area of law or subject.
- Be able to differentiate between statutory and regulatory documents and issues.
- Know how to use Public Access to Court Electronic Records (PACER), Navigator/Lex Machina, Research Institute of America (RIA), Commerce Clearing House (CCH), and Kluwer Arbitration (and other platforms based on practice requirements).
- Be able to work with library/research staff to address issues of cost constraints and outside counsel guidelines.
- Understand the value of alerts (news/case alerts, 360 publications, Bloomberg BNA, rich site summary [RSS] feeds) in tracking issues relevant to clients and matters.
- Understand the basic issues involved in federal/state legislative and regulatory research, including availability of print or online resources.

Assessing Outcomes

The first step in delivering instruction is to identify the desired learning outcomes—for example, the skills and knowledge that participants should take away from a specific law school course, three years in law school, practice-specific training, and the overall training curriculum in the law firm environment. The *PSLRC* provides a ready-made checklist of knowledge and skills. Applying these guidelines does not necessarily require a complete revision of the research instruction curriculum. A comparison with the standards and competencies already taught will likely reveal that many competencies are already included. Likewise, such a comparison can quickly uncover critical gaps in competencies that could easily be integrated into a program or course. The *PSLRC* are as equally relevant to practice environments as they are to law schools. They facilitate curriculum/competency planning across the educational spectrum.

Law schools are required by ABA Standard 302 to establish learning outcomes for the program of legal education. One of the learning outcomes that a law school must establish is competency in legal research. Standard 314 also requires that a law school utilize both formative and summative assessment methods in its curriculum to measure and improve student learning and to provide meaningful feedback. Standard 315 requires law schools to conduct ongoing evaluation of their program of legal education and to make appropriate changes to improve the curriculum.

Many schools have already established learning outcomes and published them on their websites. For example, the University of Dayton School of Law's fifth learning outcome is that "graduates will research effectively and efficiently." According to their document, "learning outcomes identify the knowledge, skills, and values the law school desires its graduates



Legal Research Principle with Accompanying Standards and Competencies

PRINCIPLE III: A SUCCESSFUL LEGAL RESEARCHER CRITICALLY EVALUATES INFORMATION

STANDARDS:

A. An information-literate legal professional knows that information quality varies.

COMPETENCIES:

- Consistently applies criteria to evaluate the reliability of information, including but not limited to authority, credibility, currency, and authenticity.
- Understands that these criteria are relevant for both print and online, and legal and non-legal, sources.

B. An information-literate legal professional evaluates legal information through cost-benefit analyses.

COMPETENCIES:

- Understands that there are costs associated with legal research, regardless of type, publisher, or format.
- Demonstrates cognizance of the intersection of cost and efficiency in the selection of information format, and exercises professional judgment to choose the best source to serve the research parameters.
- Understands the costs and benefits of mediated and disintermediated searching, and uses this knowledge to revise research strategies when necessary.

C. An information-literate legal professional understands the importance of reviewing information obtained.

COMPETENCIES:

- Clarifies or refines the research question as needed.
- Updates or expands the research.
- Identifies and addresses any contradictory authority.

View the complete *Principles and Standards for Legal Research Competency* at bit.ly/AALLcompetencies.





REFERENCES AND ADDITIONAL RESOURCES

- *Legal Education and Professional Development—An Educational Continuum*, by The Task Force on Law Schools and the Profession: Narrowing the Gap, American Bar Association, July 1992, bit.ly/MA16MacCrate.
- *Educating Lawyers: Preparation for the Profession of Law*, by William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, and Lee S. Shulman, The Carnegie Foundation for the Advancement of Teaching, 2007, bit.ly/MA16Carnegie.
- “The Boulder Statement on Legal Research Education,” bit.ly/MA16Boulder.
- *Report of the Outcome Measures Committee*, by ABA Section of Legal Education and Admissions to the Bar, American Bar Association, July 27, 2008, bit.ly/MA16Outcomes.
- “University of Dayton School of Law Learning Outcomes and Performance Criteria,” by University of Dayton School of Law, November 19, 2014, bit.ly/MA16Dayton.
- “Managing Director’s Guidance Memo,” by American Bar Association, June 2015, bit.ly/MA16ABAMemo.
- “Learning Outcomes: Their Creation and Use,” by Victoria L. VanZandt and Lori Shaw, University of Dayton School of Law, 2015, bit.ly/MA16VanZandt.
- “Out of the Shadows: What Legal Research Instruction Reveals About Incorporating Skills Throughout the Curriculum,” by Barbara Glesner Fines, *Journal of Dispute Resolution*, Spring 2013, bit.ly/MA16Fines.

to possess.” Graduates will demonstrate the achievement of the research learning outcome by three criteria: “Criterion 1: Devising and implementing a logical research plan, which reflects the understanding of the limitations created by time and financial constraints; Criterion 2: Accurately assessing the weight of authority; Criterion 3: Identifying and effectively employing the fundamental tools of legal research.”

It is not just the law school institution that needs to formulate learning outcomes. According to the June 2015 “Managing Director’s Guidance Memo” from the ABA’s Section on Legal Education and Admissions to the Bar, learning outcomes for individual courses must be published in the course syllabus.

The PSLRC is extremely useful when designing legal research learning outcomes for research courses, components of legal writing courses, or other doctrinal courses. Speaking at the Southeastern Legal Writing Conference,

Professor Victoria VanZandt from the University of Dayton School of Law, suggested faculty members developing course learning outcomes should consider whether the outcome (1) is essential; (2) is achievable; and (3) is measurable. Faculty members should also consider how many learning outcomes to include and what type of assessment tools to use to ensure learning outcomes are met. She suggested that faculty members consider three to five learning outcomes for each course. Her handout on *Learning Outcomes: Their Creation and Use* is a must-read for anyone designing learning outcomes for a course.

Multiple principles, standards, and competencies can be combined into one learning outcome. And of course, the PSLRC elements that are not included as a course-level learning outcome can still be very useful in designing lesson plans.

Furthermore, VanZandt suggests that educators in law school and

practice use curriculum mapping to ensure that their curriculum contains the components required to meet their institutional learning outcomes. If the curriculum does not, action can be taken to fill the competency gaps.

Measuring Competency

Whether formative or summative, assessment in formal research instruction generally consists of simulations, demonstrations, quizzes, exams, and written assignments. Rubrics are an informative measure of student achievement, especially for multidimensional assignments. More specifically, tackling the complexities of evaluating the research component of seminar papers, Barbara Glesner Fines and her colleagues developed a rubric that could be applied to assess varying levels of research proficiency.

Research audits provide guidance to evaluate competency at a granular level. Following Casey Flaherty’s 2013 development of a technology skills audit for lawyers (www.legaltechaudit.com), law librarians recognized that their experience responding to the research requests of lawyers and scholars provided a unique view for developing a compendium of key competencies required for practice. A series of research audits, emerging from the 2014 AALL Private Law Librarians (PLL) Summit—developed by members of the AALL’s Private Law Librarians & Information Professionals Special Interest Section (PLLIP-SIS)—have since been completed and published on the PLLIP-SIS section of AALLNET. The current set of research audits are purposely generic and cover these practice areas:

- Company research
- Intellectual property
- Legislative history
- Litigation
- Mergers and acquisitions
- Securities
- Tax

While the 2014 PLL Summit focused on the development of research audits in the law firm environment, the concept applies equally well in law schools and government. The intent was to develop tools that are relevant to specific practice environments. Audits were intended to reflect and establish department benchmarks for associates and identify learning paths of benefit to attorneys. Note that formal assessment is not included, although it is a worthwhile goal to pursue. The audits include applicable research materials and, more importantly, identify their relevance to the practice area. For example, while attorneys in litigation and regulatory practices use the same resources, their purpose and utilization can differ significantly. Competencies and research audits are invaluable tools that enable the library/research staff to play a key role in working with attorneys to meet client expectations and advance their careers.

Self-assessment is one of the least threatening evaluation tools available. Although it does not garner strictly objective results, there are valid reasons for undertaking this activity. Whether dealing with lawyers or students, guided introspection and self-assessment can raise awareness about universally held expectations for competency, spark conversation about what constitutes research competency, offer a detailed audit of an individual's unique strengths and weaknesses, and provide a method to measure improvement over time. An individual self-assessment appraisal, similar to the 20-question survey provided (see digital extra), could be adapted from the *PSLRC*. Participants simply answer "Yes" if they feel competent or "No" if they feel the need for more experience or knowledge. This type of survey instrument can easily be adapted for use in a variety of environments and provides a uniquely customized list of strengths and weaknesses for researchers at all levels of proficiency.

Assessing competency and identifying areas for improvement in the practice environment takes many forms:

- Completion of a short self-assessment by new attorneys
- One-on-one conversations following general orientation
- Formal or informal research mentoring of new attorneys
- Reference request tracking products to identify skills or new client issues where training may be beneficial

Given that attorneys have a variety of experiences—government, legislative, technology, financial, energy, environment, public service—their knowledge of research methodologies and effective use of research materials, while excellent, may need to be refocused to address fluctuating client needs. One-on-one quick office visits or just-in-time podcasts or videos can improve specific competency. Developing good relationships with practice group managers, assigning attorneys to mentor new hires, and professional development departments not only create opportunities to work cooperatively but are also additional sources of information for individual and departmental training programs.

As evaluative efforts move forward across the legal profession, the *PSLRC* provides a framework for professional development programming at the organizational level. Associates' legal research skills can be measured against the standards, the results of which can be used to target skills development in the early months of the associates' careers. Supervisors can apply the results of a legal research audit to inform specific, constructive advice during performance interviews, including the identification of performance objectives. Mentors might support protégés by identifying opportunities to strengthen specific skills. Legal research performance evaluation criteria can be developed from just a few of the 54 competencies identified in the *PSLRC* to be employed as a benchmark for competent, effective legal research.

Regardless of what approach is taken, one key factor to remember is the purpose of assessment—to improve

student/lawyer research proficiency and to enhance the instructional methods used to achieve those expected outcomes. Legal research instruction now benefits from the addition of a foundational piece of the paradigm—a comprehensive collection of standards for legal research competency. With the development of AALL's *Principles and Standards for Legal Research Competency*, there now exists a clearly articulated, gold standard from which to choose the outcomes that a single course or training module should achieve. The *PSLRC*'s full array of competencies can also serve as the basis for mapping out a curriculum, a professional development series, institution-wide instructional planning, or individual self-assessment. Ultimately, assessment in and of itself is only part of the equation, and falls short of its potential if one ignores the opportunity to continuously enrich the quality and effectiveness of the instruction as well. ■

DIGITAL EXTRA

Download the 20-question self-assessment survey at bit.ly/MA16Assessment.



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