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Creating a Legal Research Audit: Assessing Competency

by Mary Jenkins, Gail Partin, and Sally Wise

The AALL Principles and Standards for Legal Research Competency provide detailed definitions of research competencies that can be applied to all stages of a lawyer's career.

In December 2013, the NALP/ALI CLE Professional Development Institute offered a program on "Using the AALL Principles and Standards for Legal Research Competencies in Law Schools and Law Firms" presented by members of the Task Force on Promoting the American Association of Law Libraries (AALL) *Principles and Standards for Legal Research Competency*. The program's goal was to raise awareness of the *Principles and Standards*, to develop a dialog, and to establish ongoing relationships with stakeholders who interact with legal professionals and have an interest in improving their research skills.

These goals resonated with the audience of both law firm and law school professionals, who agreed that AALL's compendium of core research competencies can and should become the principal guideline for measuring and evaluating legal research competency. All in attendance were enthusiastic to now have within their grasp something tangible to refer to as they build and improve upon their own institutions' educational and assessment programs.

An Introduction to AALL's Principles and Standards

But what are AALL's *Principles and Standards for Legal Research Competency* and how can law firms and law schools use them to improve research proficiency?

AALL developed its *Principles and Standards for Legal Research Competency* and an accompanying Information Center by drawing on its professionals' deep involvement in legal research within academia, law firms, the courts, government agen-

cies, and other related settings, as well as the literature of the legal profession indicating that research competency directly impacts professional efficiency and effectiveness.

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 skill. Competencies provide concrete measures or indicators of successful achievement of the abilities required to meet the standards.

Example of a Legal Research Principle with Accompanying Standards and Competencies

Principle III: A successful legal researcher critically evaluates information.

Standard A: An information-literate legal professional knows that information quality varies.
Competencies:
1. Consistently applies criteria to evaluate the reliability of information, including but not limited to authority, credibility; currency; and authenticity.
2. Understands that these criteria are relevant for both print and online, and legal and non-legal, sources.

Standard B: An information-literate legal professional evaluates legal information through cost-benefit analyses.
Competencies:
1. Understands that there are costs associated with legal research, regardless of type, publisher, or format.
2. 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.
3. Understands the costs and benefits of mediated and disintermediated searching, and uses this knowledge to revise research strategies when necessary.

Standard C: An information-literate legal professional understands the importance of reviewing information obtained.
Competencies:
1. Clarifies or refines the research question as needed.
2. Updates or expands the research.
3. Identifies and addresses any contradictory authority.

See the complete *Principles and Standards for Legal Research Competency* on the www.aallnet.org website under "Advocacy."

In developing these core competencies, AALL intends to add value to the legal profession in several key ways:

-   To foster best practices in law school curriculum development and design;
-   To inform law firm planning, training, and articulation of core competencies;
-   To encourage bar admission committee evaluation of applicants' research skills;
-   To inspire continuing education program development; and
-   To impact law school accreditation standards.

Among participants in the 2013 Professional Development Institute program on the AALL *Principles and Standards* there was no dispute that action must be taken to address the critical deficiencies in research skill that threaten to undermine practice readiness and effectiveness. Every attendee offered thoughtful, practical suggestions for raising awareness of these new standards within their own institutions and the larger community of legal professionals. Most importantly, several attendees expressed a serious interest in collaborating with AALL to create a groundswell of support for the *Principles and Standards for Legal Research Competency*. They recognize that

integrating core research competencies into their respective workplace environments will benefit not only their institutions but also the profession as a whole. (For more information on the PDI program, including the slideshow presentation and more concrete suggestions for applying the *Principles and Standards*, consult the Learn page at the AALL Legal Research Competency Information Center.)

Embedding Core Legal Research Competencies

What good are principles, standards, and competencies, however, unless we strive to apply them in the legal marketplace? This is the critical phase that we are now entering. After spending several years developing the standards and competencies, it is now time to implement these guidelines in a manner that improves and facilitates skilled, accurate legal research practices.

Four strategic areas lend themselves naturally to the application or integration of research competency standards: curriculum design, formal instruction, assessment and audits, and performance evaluation. Law firm professionals, law school librarians and career development professionals, and skilled researchers could provide expert guidance or collaboration in these areas as they also seek to realize benefits from the *Principles and Standards* and the competencies they define.

Curriculum Design

The first step in delivering professional development or instruction is to identify the desired learning outcomes — the skills and knowledge that participants should take away from the training. The *Principles and Standards for Legal Research Competency* provide a ready-made checklist of knowledge and skills that, in combination, constitute a competent legal researcher. Applying these guidelines does not necessarily require a wholesale revision of the research instruction curriculum either. A simple comparison of the standards and competencies to an existing curriculum is likely to reveal that many competencies are already incorporated. Such a comparison can quickly uncover

critical competencies that are missing and could easily be integrated into the program. Application of the standards and competencies in this manner ensures that our teaching is aligned to actual practice and has value in all legal research environments.

It is unlikely that students will attain all of the identified competencies before entering practice; therefore, it is essential that legal career professionals address research skills development and reinforcement throughout a career. Firms generally offer a range of new associate training and professional development programming. Fewer practice settings appear to approach legal research training as a formal curriculum, complete with assessment. The availability of the *Principles and Standards* now, as relevant to students as they are to mid-career lawyers, facilitates curriculum planning across the professional development spectrum.

Formal Instruction

Once the overall curriculum has been determined and learning outcomes are articulated, the real work of creating interesting, valuable instruction begins. There are limitless creative approaches to integrating competency standards into instruction, using the competencies as benchmarks.

- One rather direct approach is to simply initiate a dialog about research competency using the *Principles and Standards for Legal Research Competency* as a vehicle to raise personal awareness of the compendium of knowledge that is expected of a competent legal researcher. After perusing the *Principles and Standards*, formal or informal observations and impressions could be solicited.

Such a dialog could take place in a variety of settings and formats, such as through in-person discussion groups, online forums, virtual chat environments, or written assignments. Conversations about research competency benefit students and lawyers alike by providing them with an instrument with which to measure their own strengths and weaknesses in a relatively safe, supportive setting.

- Assignments and exercises designed to build specific skill sets can reinforce good research habits and the assimilation of critical competencies. Just pick a standard or competency that illustrates the training focus and build an exercise around it. For example, developing critical thinking is embodied in *Principle III, Standard A, Competency 1*, which deals with evaluating the reliability of information based on criteria such as authority, credibility, currency, and authenticity. This is an indispensable skill in this age of excessive use of the web for legal research, and it would be quite easy to develop assignments to illustrate the pitfalls and best practices surrounding the use of online resources.

One interesting approach is to use provocative questions to spur critical thinking and thoughtful understanding of the idiosyncrasies and potential risks inherent in the research process. Themes such as the struggle between perfection and practicality, distinguishing between ethical and unethical discovery and use of information, or the requirement to identify and address contradictory authority can inspire lively conversations. There are several standards and competencies that encompass these themes:

- Cost benefit analysis (*Principle III, Standard B, Competencies 1 - 3*)
- Ethical discovery and use of information (*Principle V*)
- Disclosure of contradictory authority (*Principle III, Standard C, Competency 3*)

Assessing Practice-Readiness

How do we know whether an appropriate level of competency has been achieved? What assessment tools precisely target research competency?

Pre-Employment Screening

Even starting with the job interview, judges and partners have the opportunity to assess a prospective employee's fitness to practice as measured, in part, by the legal research

competencies. While reference checks and prior clerking experience, for example, provide a good sense of a candidate's research abilities, the review process might also include interview questions to test for research-oriented skills and behaviors, especially those that align most closely with the firm or department's practice areas and documentation needs. For example, some research-focused questions might include:

- Describe a research plan that you developed for a complex issue. (*Principle II, Standard D*)
- Explain how you ensure that your research is cost-effective. (*Principle II, Standard B*)
- For the writing sample you provided, describe your research approach and the specific search strategies you used. (*Principle IV, Standard D*)

Self-Assessment

Self-assessment seems one of the least threatening evaluation tools at our disposal. And although it does not garner strictly objective results, there are valid reasons for undertaking these activities. Whether dealing with legal professionals 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,
- inform subtle curricular adaptations during the course of a program, and
- provide a method to measure improvement over time.

These examples of self-assessment provide different approaches to achieve similar outcomes:

- For a broad overview assessment, new lawyers could be asked to read the AALL *Principles and Standards for Legal Research Competency* and then explain specifically which areas they

would like to improve during their training sessions as well as pinpointing which competencies they have mastered adequately. The answers could identify which research skills to focus on, leading to greater efficiency and effectiveness in professional development.

- A more structured option would be an individual self-assessment appraisal, similar to the 20-question Legal Research Competency Self-Assessment survey shown on the next page. All questions were adapted from the P*rinciples and Standards for Legal Research Competency.* For each question, participants simply need to 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.

- Well-known for self-paced, interactive, online tutorials, CALI Lessons from the Center for Computer-Assisted Legal Instruction are available for self-assessment in law firms, corporate law offices, and government agencies. In addition to lessons in numerous legal subjects, the user can also review and test competency in a wide range of legal research topics, including methodology, efficiencies, and state-specific lessons. CALI Lessons, then, provide a means of refreshing or enhancing those abilities found wanting in a self-assessment.

Formal Assessment

Examples of assessment in formal instructional settings focus on quizzes, demonstrations, exams, and research assignments. One approach to addressing the difficulties in assessing research was shared by Barbara Glesner Fines in an article about skills instruction. She and her colleagues developed a rubric to evaluate the research component of seminar papers. They identified ten complex and interwoven criteria that could be applied to assess varying levels of research proficiency. The resulting rubric and data from its application are included in her paper.

Many of these approaches can be adapted for other settings

such as bar exams, law firms, and continuing education. In an Advanced Legal Research course at Suffolk University, students complete in-class, ungraded exercises that underscore effective strategy. In that same course, and at many other law schools, a real-life research problem based on fact patterns is presented and students must develop and execute a research plan. Similar approaches in a law firm's professional development curriculum can highlight the information resources available in that firm and reinforce the efficiencies and approaches valued locally.

Regardless of what approach is taken, one key factor to remember is the purpose of assessment — to improve lawyer/student research proficiency and to improve the instructional methods used to achieve those expected outcomes. While there are many approaches to assessing research proficiency, the Fines article and others underscore the need for ongoing discourse as a valuable source for discovering more effective approaches to designing instruction and assessment tools. Assessment in and of itself is only part of the equation and falls short of its potential if we ignore the opportunity to continuously enrich the quality and effectiveness of our instruction as well.

Research Audit

Just as the Suffolk/Flaherty Legal Technology Audit seeks to assess technology prowess in the interest of improving technology skills to the end of creating efficiencies and cost savings for law practices, so too law librarians and lawyer PD professionals have acted in response to costly, time-wasting gaps in legal research competency. The literature of the professional development field and law librarianship is replete with articles on research skill development via continuing legal education, bridging the gap, onboarding, and other training programs. Raising the bar for research competency is also seen in increasing attention to assessment via the bar exam and performance evaluation.

Spurred by the example of the aforementioned technology audit, law librarians in the private firm environment focused attention during the 2014 PLL Summit (an AALL event) on the

Legal Research Competency Self-Assessment

1. Differentiates between primary and secondary sources, recognizing how their use and importance vary depending upon the legal problem or issue.
2. Identifies and uses secondary sources to obtain background information, to gain familiarity with terms of art, and to put primary sources in context.
3. Recognizes differences in the weight of authority among various types of secondary sources and applies that knowledge to the matter in which the information is utilized.
4. Understands the benefits and detriments of various resources and utilizes that understanding to make informed research decisions to change formats or search strategies as needed.
5. Understands the processes and the interrelationships between the branches of government on all levels: federal, state, and local.
6. Knows what legal information is produced, organized, and disseminated at all levels and for all branches of government and can identify appropriate resources to locate such information.
7. Understands and distinguishes between different types of primary law sources and the weight, reliability, and binding or persuasive authority of each source.
8. Recognizes basic similarities, differences, and interrelationships among and between the various types of legal regimes: international law, foreign law, and United States law.
9. Recognizes that legal information is produced, organized, and disseminated differently within various legal systems and knows how to discover jurisdiction-specific legal information.
10. Identifies and analyzes legal issues, knowing which primary or secondary sources contain appropriate and current content to facilitate research.
11. Knows how to validate the completeness, currency, and appropriateness of selected sources.
12. Differentiates and effectively utilizes various types of access points and search strategies such as tables of contents, indexes, headnotes, finding aids, Boolean operators, and search engines.
13. Understands the costs associated with legal research, regardless of type, publisher, or format and is cognizant of the intersection of cost and efficiency in the selection of information format, exercising professional judgment in choosing the outcome that best serves the research parameters.
14. Knows the relative costs of choosing to search one database over another and is aware of free and low cost alternative sources.
15. Documents research strategies and results by recording all pertinent information to facilitate research and writing.
16. Understands how to apply evaluation criteria to specific legal and non-legal sources of information to determine whether they are authoritative, authentic, and credible.
17. Reflects on the successes or failures of prior strategies for integrating new information into the analysis and utilizes prior research experiences to continue the research process.
18. Recognizes when sufficient research has been done to adequately address the legal issue or information need.
19. Demonstrates understanding of how courts or other legal decision makers have applied materials from other disciplines in the past, and determines when material from these disciplines might be persuasive in resolving a particular issue.
20. Where appropriate, locates background or supplemental information to help answer a legal issue or need.

beginnings of an <u>audit of research skills</u>. Organizers of the PLL Summit will continue to build an audit tool for use in the legal practice environment. Like the technology audit, adoption of a research audit will be dependent largely on the will of firms and law departments to test for competency, whether for the purpose of performance evaluation or for incentivizing individual and group skill attainment and efficiencies.

Performance Evaluation

As evaluative efforts move forward across the legal profession, the *Principles and Standards for Legal Research Competency* provide an architecture upon which to build a research assessment matrix that can be applied at multiple points along the career continuum. The standards provide a framework for professional development programming at the organizational level. New 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. The legal research performance evaluation criteria provided here illustrate just a few of the 54 competencies identified in the *Principles and Standards* and available for use as the standard for competent, effective legal research.

Looking Ahead: Future Possibilities

Even as diverse organizations across the legal profession express concern about recent graduates' research abilities, there is substantial evidence of opportunity for systemic improvement. From self-paced assessment and learning to emerging comprehensive efforts to audit practitioners' research competency, educators and managers are embracing the means to measure and to enhance competency.

Professionals engaged in lawyer development and evaluation can compare existing learning objectives and performance

standards to the *Principles and Standards*. Since the *Principles and Standards* reflect the pragmatic research abilities expected of practitioners, it is likely that a workplace's expectations will align already with the competencies, or desired outcomes, identified in the *Principles and Standards*. Considered the gold standard for legal research competency, these standards provide an established means of measuring ability.

Legal Research Performance Evaluation Criteria

1. Recognizes the value of both primary and secondary sources in locating relevant information and applies it properly to the facts and issues presented. (*Principle I, Standard A, Competency 1 - 3*)

2. Appropriately validates case holdings using citator services. (*Principle II, Standard C, Competency 1*)

3. Properly documents and organizes research in an orderly manner. (*Principle II, Standard D, Competency 1*)

4. Considers costs to the client and the firm when completing research assignments, including information costs and time spent on research. (*Principle III, Standard B, Competency 2*)

5. Resolves all questions posed and provides sufficient support for conclusions reached. (*Principle IV, Standard C*)

6. Understands and applies the ethical standards governing the discovery and application of information. (*Principle V, Standard B, Competency 3*)

See the AALL Legal Research Competency Information Center at www.aallnet.org/legalresearchcompetency for additional information targeted to law firms, courts, bar examiners, and law schools, along with documents and reports chronicling the development of the AALL *Principles and Standards for Legal Research Competency* and supporting research discussing information literacy and legal research skills. As assessment and evaluation tools are implemented in the law firm environment, sample documents will be added to this site. Please share your own assessment documents and experiences applying these principles, standards, and competencies at aallcompetencies@aall.org.

The Legal Research Competency Information Center, an advocacy priority of the American Association of Law Libraries, represents an ongoing commitment to competency, inviting law firms, PD professionals, law schools, courts, bar examiners, paralegal and law office administrator groups, and others to adopt the *Principles and Standards* as their own and to embed the competencies into their own skills audits and performance evaluation systems. The Information Center

gathers assessment examples so that users can benefit from the experience of others as they develop their own teaching and testing approaches. Further, the Information Center offers an opportunity for users to engage with other legal professionals concerned with legal research competency via its Action Center, which announces webinars and conferences and invites comments and idea sharing.

Perhaps the most powerful approach to improving the state of research abilities is cross-profession deliberation on assessment of competency and the means to improve it. Representatives from every sector of the legal profession are invited to join the authors and others in building a robust discourse and compendium of successful professional development and audit approaches supportive of legal research competency.

Readers are invited to complete a brief survey that seeks information about organizations' use of the *Principles and Standards* in instruction, training, professional development, CLEs, and the testing and assessment activities associated with instruction.

About the Authors

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