Report

AALL Law Student Research Competency Standards Task Force

For the AALL Executive Spring Board Meeting

March 29-31, 2011

Background:

A self-formed group of AALL members chaired by Dennis C. Kim-Prieto created a draft of Law Student Information Literacy Standards. The Standards were submitted to the Executive Board for Adoption in April 2010. There was general agreement among the Board that it would be appropriate for AALL to develop Law Student Research Competency Standards and the President was directed to appoint a Task Force to reach a successful resolution in the development and approval of the standards. [Charge to the Task Force - http://www.aallnet.org/committee/res_stds.asp]

Membership:

The members of the Task Force are Elizabeth G. Adelman, Beth DiFelice, Dennis C. Kim-Prieto, Linda-Jean Schneider, Kay Moller Todd, and Sally Wise, chair. Catherine Lemann served as the Board Liaison and Celeste Smith as the Staff Liaison. The Task Force was comprised of four members from law schools and two from law firms and the Board liaison was a court librarian.

Minority Report:

This is the report of the Task Force. Dennis C. Kim-Prieto's minority report will follow after the conclusion of this report.

Change From Law Student Research Competency Standards to Law Student Research Competency Principles:

The Task Force is presenting to the Board "Principles" rather than "Standards." The Task Force determined after much discussion that the first step in the development of Law Student Research Competency Standards must be a presentation of general principles and that the next step should be the development of specific, detailed Standards.

The Task Force also discussed using the phrase "information literacy" rather than "research competency" in the title of the Principles and determined that the phrase "research competency" would resonate most with the legal community, which is our primary focus. We do note in the Introduction that the foundation of the Task Force's principles are the *Information Literacy Competency Standards for Higher Education (2000)* approved by the Association of College and Research Libraries (ACRL).

Activities:

The Task Force first met in July 2011 at the annual meeting in Denver and has continued meeting most Friday mornings since that time. The Committee held a two-week moderated discussion in November with more than 290 participants. We also put our near final draft on a Blog and requested comments. The final draft of the Principles is reflective of the comments received.

The Task Force was charged to review the academic and practice environments that suggested the need for Law Student Research Competency Standards, to determine if there was a need for Standards, and to identify other efforts to create standards that were underway. We did so and we determined that there is a need and that there are other efforts underway.

We were also asked to determine how the Research Competency Standards might be used by the legal community. According to Deborah Epstein Henry in her 2010 book titled Law and ReOrder: Legal Industry Solutions for Restructure, Retention, Promotion & Work/Life Balance, law firms are beginning to use core competencies and core competency programs in their compensation and evaluation programs. The Law Student Research Competency Principles would be extremely useful for those programs as well as for law firm planning and training. Continuing legal education providers would also find them useful as they design programs.   Bar admission committees should use them as they design ways to evaluate research skills of candidates. Law Schools should also use them in their curriculum development and design efforts and the Section of Legal Education and Admissions to the Bar should use them in their discussion of learning outcomes.

Principles:

Law Student Research Competency Principles

Introduction

The Law Student Research Competency Standards Task Force of the American Association of Law Libraries (hereinafter Task Force) presents this paradigm of general research competency principles to foster the development of different models and eventually best practices.[1]

There is a growing body of literature and a lively discussion among members of the legal academy and the practicing bar about the research competency skills of law school graduates. This dialogue among stakeholders is essential to forge change. In our discussions, we determined that continuing communication and collaboration between law schools, legal employers, and the law school accrediting body[2] is fundamental to any efforts to address and improve the research skills of law students.

To this end, law school programs should reflect the realities of the legal field. In particular, an understanding of the many varied legal practice business models is vital. In today's environment, law firm success hinges on billable time, effective time management, effective communication, effective peer

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[1] The foundation of the Task Force's Principles are the *Information Literacy Competency Standards for Higher Education (2000, approved* by the Association of College and Research Libraries (ACRL) and endorsed both by the American Association for Higher Education and the Council of Independent Colleges. Information Literacy as defined by ACRL is the set of skills needed to find, retrieve, analyze, and use information. http://www.ala.org/ala/mgrps/divs/acrl/issues/infolit/overview/intro/index.cfm   A significant body of literature on information literacy has developed over the years.

[2] The Section on Legal Education and Admissions of the American Bar Association administers the law school accreditation process.

collaboration, and cost recovery. Similarly, efficient research habits in governmental and nonprofit settings ultimately benefit those employees and the public. Highly competent research skills, effective problem solving skills, and critical thinking skills are keys to success in all areas of legal practices of today and the future.

The Task Force is confident that this paradigm of general research competency principles will engage more stakeholders in the dialogue about the need to establish benchmarks in this area. These benchmarks should include the development of a detailed list of required skills to reflect the needs of the legal employers of the 21st century.

We offer our five Law Student Research Competency Principles for consideration, and for use in the following discussions:

- law school curriculum development and design;
- law firm planning, training and articulation of core competencies;
- bar admission committee evaluation of research skills of applicants;
- continuing legal education program development;
- law school accreditation standards review.[3]

Principle I: A successful researcher should possess fundamental research skills.

- **Law students should have an understanding of the complexities of the legal system.** They should know the processes and the interrelationships between the three branches of government and the legislation, regulations, and case law they produce. They should distinguish between official and unofficial sources of law and should place issues in context.
- **Law students should know how to effectively use secondary sources.** They should distinguish between primary and secondary sources of law. They should identify and use secondary sources for background information, to gain familiarity with terms of art, and to put primary sources in context.
- **Law students should have an awareness of the cost of research.** They should understand the costs associated with research using all formats. Further, they should identify where cost and efficiency intersect in the selection of format.

Principle II: A successful researcher should implement effective, efficient research strategies.

- **Law students should select appropriate sources for obtaining required information.** Based on the authority governing the issue, law students should determine which research tools are best suited to analyze the issue, and then they should validate the completeness and appropriateness of the selected sources.
- **Law students should construct and implement efficient, cost-effective search strategies.** Law students should first break the problem down into its components and determine an approach to each of them. They should draft research plans and timelines that include identifying the most cost-efficient sources, appropriately using available resources to perform the research, and using supplemental materials to validate and update results.

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[3] The Section on Legal Education and Admissions to the Bar is discussing student learning outcomes in proposed Standard 202.

- **Law students should confirm and validate research results, incorporating existing work product and expertise.** Law students should confirm the validity of their results by consulting prior work product, when appropriate and available. They should also seek out knowledgeable legal researchers for guidance, when necessary, considering ethical obligations.
- **Law students should document research strategies.** They should record all pertinent information, such as resources and methods used, for future reference. They should produce accurate citations and reference lists using appropriate documentation style.

Principle III: A successful researcher should critically evaluate legal and non-legal information and information sources.

- **Law students should critically evaluate the validity and credibility of information sources.** They should know the different purposes and the relative strengths and weaknesses of different types and formats of information sources. They should be able to translate skills used for familiar information sources in order to master new information resources.
- **Law students should critically evaluate retrieved information.** They should distinguish between binding and persuasive authority and distinguish otherwise binding authority from the facts at hand. They should recognize and address contrary authority and incorporate factually dissimilar yet legally relevant authority by drawing parallels to the facts.
- **Law students should synthesize the results of their research to construct new concepts applicable to resolving the problem at hand.** They should draw analogies between their situation and other areas of the law, when appropriate.

Principle IV: A successful researcher should apply information effectively to resolve a specific issue or need.

- **Law students should understand the context for the legal issue under analysis.** They should research background or historical information, such as legislative or administrative histories, where that context can inform the analysis. They should apply scholarship from other disciplines, consistent with the use made of non-legal materials by courts and other decision-makers in the past.
- **Law students should modify the initial research strategy as suggested by preliminary results.** They should incorporate additional concepts when implicated by preliminary results, and expand or narrow research queries when they retrieve unanticipated results due to the coverage of research tools or the operation of search engines
- **Law students should determine when research has provided sufficient background to explain or support a conclusion.** They should ensure that all questions posed are answered. They should identify unresolved issues and incorporate as appropriate analogous background where research did not clearly resolve the issue posed
- **Law students should use the results of their research to formulate their legal analysis and to prepare their work product.** Law students should apply principles of relevance and priority to the authority cited, taking care to choose a format and style that is appropriate for the audience and that best supports their analysis. They should organize and integrate the results of research into a persuasive document. They should also cite authority consistent with locally accepted rules, ensuring that cited references can be located by the reader.

Principle V: A successful researcher should be able to distinguish between ethical and unethical uses of information and understand the legal issues arising from discovery, use, and application of information.

- **Law students should have a mastery of information ethics and should be able to articulate the factors that determine whether an information use is ethical.** They should understand that the analysis of information ethics includes determining the lawyer's ethical obligations to the court, the bar, and society. They should also understand the organization's (firm, school, court, corporation) rules on access, storage and dissemination of information.
- **Law students should apply laws, rules, and other legal authority that govern a lawyer's use of information in the course of practice.** They should understand the principles of intellectual property, copyright, and fair use. They should also use source citations properly, to accurately indicate where the words and ideas of others have been found, and they should understand and comply with license and subscription agreements and other limitations.

Recommendations:

<u>Adoption of the Principles by the Executive Board:</u>

The Task Force recommends the Executive Board adopt the Law Student Research Competency Principles.

<u>Method of Periodic Review:</u>

The Task Force recommends that the Executive Board charge a one-year Task Force to draft Standards in line with the Task Force's Principles. We recommend that the Task Force be composed of two members from the Private Law Libraries – Special Interest Section and one member from the following Special Interest Sections: Academic Law Libraries, Foreign, Comparative and International Law, Research Instruction & Patron Services, and State, Court & County Law Libraries. We also recommend that the appointments be made in consultation with the leadership of the special interest sections.

<u>Distribution and Marketing of the Principles:</u>

The Task Force recommends that the leadership of the following organizations be presented with the Principles:

American Bar Association

- Leadership
- Law Practice Management Section
- Legal Education and Admissions to the Bar Section
- General Practice, Solo and Small Firms Division
- Government and Public Sector Lawyers Division
- Judicial Division
- Law Student Division
- Young Lawyers Division
- Bar Services Division

National Minority Bar Association

State Bar Associations

National Conference of Bar Examiners

ACLEA - The Association for Continuing Legal Education

Association of American Law Schools

- Section of Law Libraries
- Section of Legal Writing, Reasoning and Research

SALT – Society of American Law Teachers

ALWD – Association of Legal Writing Directors

Association of College and Research Libraries

The Task Force also recommends a marketing strategy to introduce the Principles to the membership and to provide them a possible marketing strategy for their organization.

We also recommend that a web page and a brochure be developed.

Minority Report

Submitted by Dennis Kim-Prieto,

Member, AALL Task Force on Law Student Research Competencies

There is much to commend in the Task Force's submitted report, and in the work that we have accomplished over the past year. In particular, the Task Force's shift towards articulating "Principles" is a positive re-framing of the original Law Student Information Literacy (LSIL) Standards and one that will allow the Association (and the profession) to begin and to engage in a conversation about what our students should learn, and how our students actually learn legal research in the law school curriculum.

I join the Task Force in encouraging the Executive Board to adopt the recommendations in the report as well as the Principles themselves, but I also urge the Executive Board to reconsider the critical issue of framing and presenting these standards without Information Literacy (IL). Allowing the concept of IL to remain at the heart of these standards not only brings instructional law librarianship into the wider community of IL librarians and their scholarship, it also allows us to more easily apply and adopt theories and techniques of IL-focused instruction into our own legal research curricula. To this end, I have appended an alternate draft introduction to the Principles that more fully and more accurately appropriates and acknowledges the role of IL in this entire project.

By reframing the principles as "Law Student Research Competency Principles," rather than "Law Student Information Literacy Principles," the Task Force has removed substantive benefits from the document, and has inadvertently undermined the progress that law librarians have made in this area for the past two years. Most significantly, by removing "Information Literacy" from this work, the Task Force ends up eliminating the contributions from library science at the heart of this endeavor. IL has been consistently demonstrated to be a measurable quality; the Association of Research Libraries (in conjunction with Kent State University) has sponsored a web-based IL assessment that has been administered at over 200 separate institutions of higher education, and has assessed more than 35,000 students in the past 5 years.[1] As the National Conference of Bar Examiners moves steadily toward assessing research skills on the Multi-State Bar Examination, it is imperative that we develop an independent means of assessing Law Student Information Literacy in order to assess not only our students' learning, but also to assess the effectiveness of legal research curricula and instruction.[2]

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[1] *See* ABOUT PROJECT SAILS: HISTORY, available online at https://www.projectsails.org/sails/history.php?page=aboutSAILS (last viewed 10 March 2011).

[2] Many have commented the NCBE's plans to assess law student research skills. This endeavor is discussed in greater detail on p.16 of *How Law Student Information Literacy (LSIL) Standards Address Deficits Identified by the MacCrate Report and the Carnegie Report, and What They Mean for Legal Research Education & Training*, available on SSRN at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1678146.

Information Literacy is a cornerstone of library instruction. More than 30 years after E. Gordon Gee's seminal work, INFORMATION LITERACY: REVOLUTION IN THE LIBRARY, countless colleges, universities, local school boards and state departments of education have adopted IL as a framework for assessing (and ultimately measuring) student research skill and performance.[3] However, IL encompasses a larger set of skills than research tasks. IL is also a framework for approaching research (and scholarship) that asks the student to bring a critical and recursive awareness to the research process. Rather than simply moving through a checklist of tasks, the information literate student assesses steps within the research process. This key distinction between "Research Competency" and "Information Literacy" doesn't merely leave the student a better researcher, it also leaves the student better prepared to master new and unfamiliar tasks in research (and drafting), which ultimately leaves the student better prepared to excel in the practice of law. It is worth noting that several comments to the blog that the Task Force sponsored also share this view, and also urge the re-incorporation of IL into this project.

Perhaps the most vivid demonstration of IL may be found in *The Universe of Thinkable Thoughts Versus the Facts of Empirical Research*, by Joseph Custer.[4] Although the article does not address IL, it does present a distinction between research that relies upon the Descriptive Word Index in the West Digest System and research which relies upon topical analysis. The paper presents survey results which show that practitioners prefer using the Index over mere topical analysis, and the paper itself demonstrates how the context provided by the Index allows for a more complete and contextualized understanding of the material being researched. It is the very context that the Index provides that strikes me as the clearest description of the distinction between Research Competency and Information Literacy; this work contrasts the accounts of some competent researchers who do not know how to find the most effective research tools (or even understand why one tool may be more effective than another for differing research tasks) with those who do. The information literate law student (and lawyer) is able to demonstrate both of these abilities: finding the most effective research tools, and explaining why one tool may be more effective than another in a given research task. IL, in short, directly addresses the gap that Custer identifies.

The Task Force would replace "Information Literacy" with "Research Competencies" because they believe that the latter phrase would "resonate most with the legal community." While this belief is grounded in commonly accepted principles of marketing, it fails to apprehend the influence that IL has already exacted on accreditation agencies, governments, and upon the business community. Certainly, those law librarians who are local to their firm, court, bar, or school must be the ones who best fit these Principles to their local audience and community. Too this end, I share the Task Force's recommendation for developing and suggesting marketing strategies to these librarians. However, the centrality of IL to these very principles is far too important to be omitted. Taking IL out of this body of work not only removes it (and the instructional law librarians who will rely on it) from the extant body of IL scholarship, it also removes the expertise of instructional law librarians from the conversation that these principles seek to inspire. I strongly urge the Executive Board to adopt these principles as Law Student Information Literacy Principles.

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[3] *Id.* at 2-6.

[4] 102:2 LAW LIB.J. 251 (2010)

Draft Introduction to the Law Student Information Literacy Principles:

There is a growing body of literature in the general press about the information literacy levels of college students; among members of the legal academy and the practicing bar, this has taken the shape of a lively discussion on the research skills those students demonstrate upon graduating law school. Leading this discussion among stakeholders is essential to forge a much-needed change in our approach to teaching research skills to law students.

The Law Student Research Competency Standards Task Force of the American Association of Law Libraries (hereinafter Task Force) drafted a paradigm of Law Student Information Literacy Principles to guide the development of best practices for research instruction. These practices are based on the Information Literacy Competency Standards for Higher Education, approved by The Association of College and Research Libraries in 2000, and endorsed by the American Association for Higher Education and the Council of Independent Colleges. The Task Force offers this paradigm to engage more stakeholders in the dialogue of exact standards that will reflect the needs of current legal employers. These Law Student Information Literacy Principles are intended to serve as a basis for discussion of law school curricula, in considerations of training and core competencies within law firms, for bar admission committees evaluating the research skills of applicants, and in discussions of the American Bar Association, Section of Legal Education and Admission to the Bar and Law School about meeting the student learning outcomes requirement in proposed Standard 302.

We begin these principles with a discussion of "communication and collaboration," which is a core assumption of Law Student Information Literacy. Law school programs must be informed by the realities of the legal field, and such information is achieved through communication and collaboration between law schools and employers. In particular, law students should have an understanding of the law firm business models. They should know that time is a key resource: success of the law firm's mission hinges upon billable time, effective time management, effective communication, effective peer collaboration, and cost recovery. To this end, law students should have an understanding of the importance of research skills, problem solving skills, and critical thinking skills. Law schools should continue to offer courses which will offer them opportunities to learn these skills, and students should enroll in them.

The Task Force's recommendation to the American Association of Law Libraries includes the formation of a standing committee to participate in the dialogue and to consider recommending a more detailed list of required skills.