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TRIAL BY FIRE ... CREATING A PRACTICAL APPLICATION RESEARCH EXAM

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The word came down to me early in the fall semester. This year our library director, Mary Mahoney, wanted to use some sort of hands-on demonstration legal research exam for our first-year students. Realizing the advantages that such an exam would have over more traditional approaches, and deciding that the required structure and logistics were relatively straightforward, we decided to give it a try.

This article describes the development of the exam that resulted from that idea, as well as our experience in administering it for the first time to first-year legal research students at the Mississippi College School of Law in the fall of 1998.¹ Instead of a traditional written exam, students were required to demonstrate, in one-on-one sessions with a reference librarian, the actual research skills

¹ The first-year legal research and writing class is taught by the director of Legal Writing. Each first-year section of roughly 70 students meets twice a week. The library director and I teach the research component of this course. In 1998 we taught seven of the 23 class meetings, covering the following topics: 1) Finding Case Law: The Basics; 2) Legal Encyclopedias, Indexes, and Other Secondary Resources; 3) Shepard's®; 4) The *United States Code*; 5) Federal Legislative History; 6) The *Federal Register* and *Code of Federal Regulations*; 7) Treatises, Practice Materials, and Mississippi Resources. The seventh class was a catch-all in which we discussed a variety of resources. Our law school does not have a formal advanced legal research class, so this last class is a survey of what else is available in particular areas of practice, as well as an overview of Mississippi materials. Because it came late in the semester, this seventh class was the only one that had no homework. Therefore, the exam covered only the first six topics.

they were taught during the semester. Despite all the work and detailed preparation, everyone involved judged the exam to be a success.

Choosing a Format

In the past, we've tinkered with various formats and combinations for written exams: multiple choice, short answer, discussion, etc. But is a written examination the best test of a practical skill, whatever the format? Would the winner of a piano competition be as renowned if the contestants merely *described* in an essay *how* they would style and perform a particular piece?

A hands-on exam would let us test whether students had actually learned how to use the books. If they had to demonstrate, *mano a mano* with a librarian, specific research tasks, they would be judged on what they could do, not on how well

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they could *describe* what they could do. Studying their notes late into the night before the exam wouldn't work: you can't cram for or fake what we were going to test.

The first matter was the format of the exam. I planned to use a sampling technique: give the students a list of specific research tasks for which they would be held responsible, and then randomly select several from the list for them to demonstrate during their exam session. My thinking was that if they could complete a few randomly selected tasks, they probably had mastered all of them. Looking at the topics we were teaching and the homework we were assigning, we eventually came up with 10 research skills that represented what we expected the students to learn. We decided that for the exam, they would have a half hour to work through brief research problems demonstrating three of those skills. We would grade their performance both on the answers to the problems and on the procedures they followed to reach those answers. If they missed a required step—such as checking a supplement—but found the answer, they would still lose points. We would also deduct points if a student was floundering and needed a hint to get back on track. The students would not be allowed to use any notes, but they could consult a list of what states are covered by which regional reporters. And if they blanked out on the location of *Corpus Juris Secundum*® (CJS®) or some other set, they could ask for directions, just as they would be able to at any library with which they were unfamiliar. This exam was not going to be a treasure hunt or a test of what the students had memorized. Nor was it going to be a race: 30 minutes was the schedule, not a time limit. We would cut a student off only if it was obvious that he or she could not find an answer.

Selecting the Content

At our first class, we gave the students an overview of the research portion of the course. We also explained that instead of a written exam, they would be asked to actually demonstrate specific research tasks during a 30-minute “practical application exam.” I promised them that a few weeks prior to the exam period I would give them a list of the various tasks for which they would be responsible, along with sample questions and answers with which they could practice.

In the research classes themselves, we pointed out skills that we knew we would test. For example, after we covered the West topic and key number system, we said that using the digests to find case law on a particular issue would be one of the skills the students would be responsible for on the exam. The defined research “task” for this skill and the sample question were:

Task: Use the appropriate digest to find case law in a specific jurisdiction on a particular legal issue.

Question: Find a 1968 case in Mississippi that discusses the negligence of a surgeon who left a hemostat in a patient during a hernia operation.

The tasks were concise summaries of the skills we had selected, and the questions represented the application of the skills to particular problems.² The tasks were all straightforward, and the questions we used to test these tasks all had simple, definitive answers that the students should readily be able to find if they used the books as they had been taught.

After defining the 10 tasks, it occurred to me that a truly random distribution would not make for an effective exam. Of the 10 tasks, four involved basic case law skills (reporters, digests, and legal encyclopedias), three involved Shepard's, and the remaining three covered *American Law Reports* (ALR®), the *United States Code*, and the *Code of Federal Regulations* and *Federal Register*. I thought everyone should be tested on at least one case law question, and I didn't want someone to have more than one Shepard's question. So I lumped the tasks into these three groups and decided that everyone would get one question, randomly selected, from each group.

We realized from the beginning that there was a certain artificiality in considering any finite list of research tasks to be the ultimate indicator of basic legal research knowledge. We were not testing, and in this exam format could not test, their legal reasoning skills or their ability to perform broad, open-ended research that integrated multiple resources to provide a full answer to a complex

² Defining each research skill as a specific, objective task that could be measured and graded was inspired by my time in the Marine Corps, where practical application testing is used during training to demonstrate mastery of a skill. I even told the students that the research exam would be similar to boot camp, where you have to do things like fieldstrip and reassemble a rifle in 60 seconds to graduate. I did promise them, however, that we wouldn't be yelling in their faces while they Shepardized® a *U.S. Code* section.

legal question. Those skills were covered in the research homework we gave them and in the memos they were writing during the semester. We would be testing only book skills: how to correctly use specific legal bibliographic resources to find material based on given criteria.

Preparation and Practical Concerns

We planned to remind the students that despite its nature, this exam, like all others in the law school, was governed by the honor code. Trying to eavesdrop or observe a student taking the exam to get insight into specific questions, or talking about the exam afterward, were violations of the code. Still, we knew that some leakage was inevitable. After all, we would be conducting the exams throughout the library during the last two weeks of classes, when first-year panic was at epidemic strength. As a result, we decided to have three different exam questions for each of the 10 tasks. Thus, besides being randomly assigned three of 10 tasks, the students also would randomly receive one of the three questions we would prepare for each task. I also knew I still had to somehow make allowance for distributing the tasks and questions so that two students taking their exam with different librarians at the same time were not, for example, both working on an Am Jur® question.

In the middle of October the four librarians who would administer the exam³ met to discuss the details of the exam. I passed around copies of the sample questions and answers that I was going to distribute to the students for their use in preparing for the exam.⁴ We divided the responsibility for developing the actual 30 questions that we would need for the exam, and set a deadline that would give us time to double-check the questions for accuracy and appropriateness for the exam format.

We decided not to micromanage grading procedures. We would use a scale of 20 points because the research exam was 20 percent of the student's final grade in the course; each task was worth a third of 20 points. I told everyone to use their best judgment, deduct appropriate points for mistakes, and, if a student was obviously stuck, deduct a point or two

³ Besides me, this included Mary Mahoney and our two reference librarians, Karin Den Bleyker and Patricia Ice.

⁴ See *infra* Appendix: Sample Questions for the First-Year Legal Research Skills Practical Application Exam.

for the hint needed to get the student started again. I planned to take the average of each librarian's scores after the exams and correct any significant deviation from the overall average by weighting the grades appropriately. I hoped this would correct for any major grading disparities among the four of us.

Logistics

Two weeks. Four librarians. Individual sessions with 134 first-year law students at the end of the semester when the stress meter was already near redline. The scheduling difficulties weren't obvious until I belatedly started this task in late October. Although there is probably some moderately priced software that would do this automatically, I used WordPerfect tables to make a schedule for the two weeks, with each day divided into 30-minute time periods.

I started by blocking out all the first-year classes. I was adamant that no student's performance would be affected by watching the clock because he or she was worried about being late for his or her next class. So I took a deep breath and blocked out every half hour prior to a first-year class as well. In doing so, I already knew that some of us would be giving three and four exams in a row.

Next, I carefully counted up the available slots. Ninety-three? We would have to add another week, or schedule exams in the evenings! Then I remembered that many time slots would have two or three of us administering exams simultaneously. Okay, breathe again.

Taking all these factors into consideration, along with the reference desk schedule, I filled in the available student time slots with the first initial of the librarians who would be able to administer the exams during that half-hour period. I double-checked everything before counting up the total: 158 possible exam slots. Eliminating a few time slots in consideration of the director's heavy schedule, I decided that we would work with 150 time slots: 16 extra for 134 students would, I felt, provide them with a fair range of choices.

I created a QuatroPro spreadsheet with all the available time slots and used it to make sign-up sheets. After the students signed up, I plugged their names into the time slots to create a master data file for the exam. I printed one list with the records sorted in alphabetical order and posted it on my

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“ [T]hey would be judged on what they could do, not on how well they could *describe* what they could do. ”

office door so students could check their time slot. A second list in chronological order went on my wall to use as a master schedule.

I still had to assign the tasks and questions to the time slots. The tasks (1–10) were paired with letters (A, B, and C) to indicate which of the three questions for that task would be used for a particular student. I added three fields, one for each of the three tasks they would complete, and used QuatroPro to randomly distribute the tasks and questions. Then I went over the entire list, looking at the time slots in which we had two or three students taking their exam at the same time and swapped any duplicated tasks so that no one would be using the same resources at the same time. Once this was complete, I had a spreadsheet with records for each student that looked like this:

Smith, Joe	Wednesday, 17th	1:30 p.m.	1C, 6A, 9C
[name]	[day, date]	[time]	[questions]

I printed this version of the spreadsheet, which I would use to fill out the grade sheets and distribute the questions during the exam.

There was one more thing to do. Looking over this master file, I noticed that occasionally two consecutive time slots used the same question. I took the easy way out on this problem and decided to have two copies of each question, so that we wouldn't be waiting for one exam to finish before we could start the next. The 30 questions we used, two copies each, were attached to index cards. They looked like this:

10-C c.1

Find the federal regulations on the filing of rate schedules for the Federal Energy Regulatory Commission. Check to see if there have been any recent changes to these regulations, and locate the text of the changes, if there are any.

The code at the top meant this was the third question (“C”) for task number 10, and that this was the first of the two copies of the card. Since these cards were the exam, they stayed locked up in my desk drawer when they were not in use.

Conducting the Exam

Here is the daily routine we followed during the exam period. First thing in the morning, and again in the early afternoon, I put the names of students scheduled for the next few hours of exams on grade sheets, sorted out the question cards each

student would be given, and used paper clips to attach the cards to the grade sheet. In my office, each librarian had her stack of grade sheets and question cards for her students, along with one of the three master lists of questions with the correct answers. The cards and completed grade sheets were returned to my office after each exam, and the next student's questions and grade sheet were picked up. Throughout the day, I would refile and distribute the cards for the rest of that day's exams, and enter the students' scores on my master spreadsheet. After the last exam of the day, I would inventory the 60 cards and answer sheets, and lock everything back up in my office.

During the first day of the exam period I was as nervous as the students. But I was as relieved at how smoothly the operation went as they were at how well most of them performed. After the first morning of six or seven exams, no surprises had come up to broadside me. In fact, only two modifications were made to our procedures throughout the entire two weeks. After a few days, we rephrased one task's three questions because of ambiguity. A more important procedural modification was to quickly establish a standard point structure for common mistakes, as we discovered that several of us were deducting a different number of points for the same mistake. Also, I had not anticipated using fractional final grades (e.g., 18.5), but we found ourselves uncomfortably limited by whole numbers. This was probably the worst lapse in my planning: we should have created a uniform grading scheme *before* exams started.

It turned out that the half-hour format was ideal. Many students finished in much less time. The next student on a librarian's schedule was often waiting and eager to start the exam, so we ran ahead of schedule about as often as we ran behind. Many students who used more than 30 minutes did so because they were overly cautious and extremely methodical. Only a few were actually stumped and missed important parts of the research procedures for a given question. The most common mistakes were on the Shepard's questions. Many of the target cases were in the most recent paperback supplements, and students often skipped the hardbound supplements after checking the main volumes of a set. We ended up docking them two points for this mistake.

The exams continued to go smoothly for the entire two weeks. No students forgot their time slot, I only had to reschedule one student due to an emergency, and no one had a panic attack—neither students nor librarians.

Overall, the students did quite well: 60 (45 percent) earned a perfect 20 points, and 116 (86 percent) made 18 points or better. A single student earned the lowest grade of 15. The average score was 18.99, and the greatest deviation from this average for any one of the librarian's average scores was +0.64. I concluded that this was insignificant and decided against adjusting the students' scores.

Conclusion

The librarians were unanimous in their assessment of the experience: although the exam kept us very busy for two weeks, we thoroughly enjoyed the interaction with the students and felt it was an accurate appraisal of what the students had learned. It took a lot of effort, but the work was front-loaded: the amount of preparation before the exam was probably less than the total effort required to grade 134 traditional, written exams. Also, because this was the first time we had done this, much of the work will carry over to next year and the preparation won't take so long the second time around.

More importantly, the exam was a success with the students. Many of them worked through the sample questions numerous times and were completely prepared for the exams. Most of them were very pleased with how well they did, and at how easy it was to finish the exam within the allotted 30 minutes. This exam format was also very time-effective for them: instead of a two-hour, sit-down exam in the final weeks of classes, they only gave up a half-hour of their study time. And I'm confident that a larger proportion of the students will retain a greater than average number of the research skills they learned than would have been the case if they had been tested with a more traditional written exam.

There are only a few things that I want to do differently next time. The first is to set up a consistent grading scheme *prior* to the exam. We wanted to avoid an extremely detailed grading checklist to allow for flexibility, but every student who makes the same mistake should be penalized equally. Also, in retrospect, I would take the deviations of the librarians' average scores into consideration, mainly because of the way the director of Legal

Writing determined the students' final grades. The research exam was indeed only 20 percent, but she used a total of 1,000 points for the entire course. On that scale, a tenth of a percent on our exam could make a difference in the borderline cases. And logistically, I don't know why I didn't think to use my QuatroPro data to automate the grade sheets by merging it with a form file. Then I could print them all with the student's name, exam date, and time already in place. Maybe next time.

TOP FIVE TIPS FOR PREPARING A PRACTICAL APPLICATION LEGAL RESEARCH EXAM

1. Start Planning Early

Especially the first time out, this type of exam requires a great deal of preparation.

2. Keep Students Informed

Let the students know throughout the course what will be expected from them on the exam.

3. Create Good Exam Questions

Check, double-check, and triple-check the questions to make sure they are appropriate and can be finished in the allotted time.

4. Standardize Grading Criteria

We overlooked it—don't you. Standardized criteria ensure that all students are graded equally and eliminate confusion for the graders.

5. Be Flexible

Some glitch will happen during the exams themselves—just adjust and drive on!

.....

Appendix:

Sample Questions for the First-Year Legal Research Skills Practical Application Exam

Below is a list of 10 research skills. Each skill is followed by a sample research question that applies to that skill. Three of these skills and their corresponding research questions will be randomly selected and presented to you during your half-hour exam period. One of the reference librarians will monitor and grade your ability to use the correct library resources to answer these questions.

1. Use the appropriate digest to find case law in a specific jurisdiction on a particular legal issue.

Find a 1968 case in Mississippi that discusses the negligence of a surgeon who left a hemostat in a patient during a hernia operation.

2. With one case, use the correct digest to find similar case law from a given jurisdiction.

Find a 1997 Mississippi case that discusses a similar or related point of law to that described in headnote 10 of 93 S. Ct. 705.

3. Find the discussion of a particular legal issue in a legal encyclopedia. Using Am Jur 2d, find a discussion of how treason against the United States includes giving aid and comfort to the enemy.

4. Find a case on a legal issue from a specific jurisdiction using a legal encyclopedia. Find a case from Minnesota, cited in CJS, which establishes that a rabbi is included within the term “clergyman.”

5. Shepardize® a case to ensure that it is a good precedent. You want to rely on 847 F. Supp. 306 at trial. Is it “good law”?

6. Shepardize a statute to look for a court’s treatment of that statute. Find a case that explicitly ruled on the constitutionality of 8 U.S.C. §1252 [1994].

7. Use Shepard’s to find a case that discusses a specific point of law in a case that it cites. Find a case that cites 451 So.2d 569 for the legal issue discussed in headnote 1 of that case.

8. Find an ALR annotation on a specific legal question. Find an annotation from ALR 2d, 3d, 4th, 5th, or ALR Federal on the meaning of the term “hotel” as it is used in zoning ordinances.

9. Locate a federal statute on an issue and find the public law that became that statute. Find, in the *United States Code Annotated*®, the code section that deals with the health warnings that are required to be on cigarette labeling and advertisements. Find the text of the original public law for this statute.

10. Find the federal regulations on a given issue and look for any recent changes to them. Find the federal regulations on the filing rate schedules for the Federal Energy Regulatory Commission. Check to see if there have been any recent changes to these regulations, and locate the text of the changes, if there are any.

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