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A Golden Opportunity: Legal Research Simulation Courses

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A GOLDEN OPPORTUNITY

LEGAL RESEARCH SIMULATION COURSES

How two libraries are answering the call for experiential law school courses.

BY LESLIE A. STREET AND SHAWN G. NEVERS

When the dust settled on the American Bar Association's (ABA) most recent overhaul of its *ABA Standards and Rules of Procedure for Approval of Law Schools*, librarians were met with a number of significant changes. While not as obviously relevant as the changes to the library standards, one change that intimately affects librarians teaching legal research is the addition of simulation courses to the standards. A subset of experiential courses, simulation courses seem like a ripe designation for advanced and specialized legal research courses. Not only will administrators be looking for courses that meet the standard, but being designated a simulation course will ensure legal research is included in

the important conversation of preparing students for practice.

In preparation for the simulation course standard to go into effect with the entering class of 2016-17, librarians at the University of North Carolina (UNC) and Brigham Young University (BYU) have begun modifying their legal research courses to comply with the standard.

The requirements for simulation courses are found in two somewhat overlapping standards—303 and 304. Standard 303(a)(3) specifies that law schools must require at least six credit hours of experiential courses from the following accepted options: simulation courses, law clinics, and field placements. While specific definitions and requirements are provided for each in later Standards, Standard 303 provides certain requirements that all

experiential courses must meet. A simulation course, therefore, must meet the general requirements of an experiential course under Standard 303(a) (3), as well as the specific requirements for simulation courses under Standard 304(a). View the full *ABA Standards and Rules of Procedure for Approval of Law Schools 2015-2016* at bit.ly/MA16ABAStandards.

As can be assumed by the name, the overarching requirement of experiential courses is that they be “primarily experiential in nature.” A March 2015 *ABA Guidance Memo* explains that the use of the word “primarily” means that the experiential nature of the course should be its organizing principle, rather than just a component. This requirement envisions far more than simply adding practice-based assignments to an already developed course. Legal research professors should reassess their courses, including assignments, activities, and teaching methodology, to ensure that experiential learning is at the core.

Applying Standard 303

Traditionally at UNC, the Advanced Legal Research (ALR) three credit-hour courses have been taught meeting an upper-level “skills” requirement for graduation. Over time, these courses have evolved into rigorous courses using practical problems, demanding students produce written assignments that reflect the type of work they would produce in practice. In approaching new simulation courses, librarians at UNC found it useful to focus on simulating research skills within the context of particular practice types. Professor Tim Gallina designed the first three-credit simulation course in Corporate and Transactional Legal Research that requires students to imagine themselves as associates at a law firm handling corporate and transactional matters. Students work on a variety of research problems simulating a corporate client like Uber or Airbnb.

By establishing the framework of a simulated practice environment at the outset of course development, it was possible to build in the critical skills and theory of legal research while ensuring that the course remained primarily experiential.

In addition to being primarily experiential in nature, experiential courses must also “integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more of the professional skills identified in Standard 302” and “develop the concepts underlying the professional skills being taught.” Legal research is one of the few professional skills specifically listed in Standard 302. The integration requirement asks legal research instructors to do more than simply teach the skill of legal research and its underlying concepts. In lawyering, doctrine, theory, and ethics cannot be divorced from the skill of legal research, nor should it be

STANDARD 303 CURRICULUM

- (a) A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following:
- (3) one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement. To satisfy this requirement, a course must be primarily experiential in nature and must:
 - (i) integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more of the professional skills identified in Standard 302;
 - (ii) develop the concepts underlying the professional skills being taught;
 - (iii) provide multiple opportunities for performance; and
 - (iv) provide opportunities for self-evaluation.

in an experiential legal research course. Legal research instructors should not only teach effective use of citators, for example, but should help students experience how doing so benefits the client, leads them to a fuller understanding of legal doctrine, and fulfills ethical obligations. Students are more likely to retain such integrated teaching.

Experiential courses must also “provide multiple opportunities for performance.” This requirement should not be difficult to satisfy, but legal research professors looking to maximize the experiential nature of a simulation course should look for various ways to experience each legal research concept that is taught. Both UNC and BYU include multiple in-class and out-of-class assignments that allow students to practice what they are learning. BYU has also experimented with providing practice opportunities to be completed before class, which then become the basis for class discussions. Similarly, UNC has used a variety of out-of-class assignments, from drafting merger documents or municipal law ordinances to writing client emails.

Finally, an experiential course must “provide opportunities for self-evaluation.” Reflection and self-evaluation help students gain meaning and understanding from the experiences they have just accomplished. Self-evaluation is especially important in a legal research course so that legal researchers are able to identify where they may be going wrong and make adjustments. Self-evaluation can help students develop this skill, preparing them to research without the oversight of a teacher.

Both UNC and BYU librarians have begun implementing opportunities for students to reflect and self-evaluate. UNC envisions making this self-reflection process part of the research log they use as an assessment tool, while BYU has experimented with asking students to add these self-reflective paragraphs at the end of each student response memo. Questions a student

can be asked include: *What worked well and what didn't work as a part of the process? What sources did you find useful? What techniques brought you the best result this time? Is there anything you would change about your process if you were asked this kind of question again?*

Applying Standard 304

In addition to meeting the requirements of an experiential course, a simulation course must meet the other requirements listed in Standard 304(a). While some of the requirements of a simulation course duplicate what is required for an experiential course, the crux of a simulation course is that it provides substantial experience not involving an actual client that is “reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a set of facts and circumstances devised or adopted by a faculty member.” This directive and the overall context of Standards 303 and 304 suggest that students in legal research simulation courses will primarily participate in legal research assignments they might actually see in practice. This conclusion is further supported by the fact that simulation courses are listed together with law clinics and field placements; two law school activities that deal with real world legal research projects.

With a focus on providing a similar experience to that of a lawyer, it is unlikely that legal research courses with assignments consisting of treasure hunts, research guides, or pathfinders, will be found to meet the simulation course standard. While

AALL2go EXTRA Watch the “Designing Engaging Assignments for Your Course” webinar at bit.ly/AALL2go1114.

AALL 2016 ALERT Don't miss Shawn Nevers' session “Attorney Research Skills: Continuing the Conversation Between Law Firm and Academic Law Librarians,” Monday, July 18 from 2:00 p.m.–3:00 p.m. For more information visit bit.ly/AALL16Research.

STANDARD 304 SIMULATION COURSES AND LAW CLINICS

(a) A simulation course provides substantial experience not involving an actual client, that (1) is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a set of facts and circumstances devised or adopted by a faculty member, and (2) includes the following:

- (i) direct supervision of the student's performance by the faculty member;
 - (ii) opportunities for performance, feedback from a faculty member, and self-evaluation; and
 - (iii) a classroom instructional component.
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practicing lawyers may be asked some treasure hunt type research questions, it is unlikely that this will account for even a small percentage of a lawyer's research time. An even smaller percentage of time, if any at all, will be spent creating research guides or pathfinders. These are simply not the legal research tasks that lawyers are asked to do.

Some instructors may argue that for pedagogical reasons, these assignments are still valuable. While this may be true, the Standards strongly suggest that these assignments cannot be the primary assignments on which a course is based if it is to qualify as a simulation course. The March 2015 *ABA Guidance Memo* warns “the Standard suggests that to qualify as an experiential or simulation course, the course must be easily identifiable as such.” Legal research instructors who cling to treasure hunts, research guides, and pathfinders run the risk of inviting closer scrutiny by administrators or an accreditation committee as to whether their course is a simulation.

On the other hand, it is unlikely that a course that puts law students in the position of a new associate and

asks them to solve research problems will raise concern. Lawyers are asked to perform legal research regularly and that is what the Standard anticipates that they will do in a simulation course. Because the Standard envisions students acting as lawyers, legal research professors would benefit from framing their class in a way that helps the students imagine themselves as a member of a firm with the professor as a senior partner. Where possible, it would be useful to use the same “client” (or same few clients) throughout the course.

Because of the success of this model in the Corporate and Transactional ALR course, UNC has successfully proposed three additional practice-specific ALR courses slated to start next year: Intellectual Property and Technology, Research Through the Litigation Process, and Global Legal Practice. Students will learn legal research through dealing with simulated legal problems in those practice settings, such as working through research in litigation from when a client first walks in the office through research needed to prepare for trial. In addition to teaching the research process and sources, the subject-specific courses also focus on practice-specific research tools and resources like court rules, standing orders for litigation practice, foreign law for global law practice, company research for transactional and corporate practice, and trademarks and patents for intellectual property practice.

In addition to providing assignments that simulate practice as discussed above, UNC librarians have focused on producing written work that reflects the type of writing done in the practice world. Examples of this include working on client “pitch books” in corporate and transactional practice or writing or responding to pretrial motions in litigation practice. To better simulate the practice environment, UNC has experimented with giving students assignments in ways they would be likely to receive assignments in practice—through email, or orally from a law firm partner (which requires students to listen carefully and ask follow-up

questions). BYU librarians have given assignments orally to first-year legal research classes for several years and have found it to be an instructive teaching tool that simulates practice.

Finding the right quality and quantity of facts, circumstances, and legal research problems takes considerable time and effort and is something legal research professors will likely need to spend more time on. Professors Sara Sampson and Tim Gallina provided a number of great ideas for creating research problems in their 2014 AALL webinar “Designing Engaging Assignments for Your Course.” Legal research professors may also want to consider working with practitioners to get ideas for legal research problems. Fortunately, Standard 304 suggests that faculty members do not have to devise facts and circumstances all on their own. Legal research professors may want to find more ways to share the burden of developing problems for simulation courses.

In addition to establishing the overarching requirement of providing substantial experience that is reasonably similar to that of a lawyer—Standard 304 sets out three additional requirements.

Supervision. First, simulation courses must include “direct supervision of the student’s performance by the faculty member.” This should not differ much from what most legal research professors currently do.

Feedback. Next, simulation courses must provide “opportunities for performance, feedback from a faculty member, and self-evaluation.” Providing opportunities for performance and self-evaluation are required by Standard 303 and were covered previously. Simulation courses require the additional component of “feedback from a faculty member.” Feedback is often missing in the law school curriculum, but the ABA and others have encouraged law schools to provide more feedback to students. ABA Standard 314 now requires law schools to use both formative and summative assessment

methods. Interpretation 314-1 defines formative assessment methods as “measurements at different points during a particular course or at different points over the span of a student’s education that provide meaningful feedback to improve student learning.”

Luckily, because of the nature of legal research, most legal research professors have often already incorporated quite a bit of feedback into their courses. What constitutes meaningful feedback has been discussed elsewhere, but the requirement of more intensive feedback is an argument in favor of smaller legal research courses where instructors can offer more personal attention and feedback to students. At UNC, the goal size for their three-credit hour ALR courses is 15 students in each section; a modest number for classes that tend to have long waitlists.

Instructional component. Finally, the Standards require “a classroom instructional component.” This requirement emphasizes the point that while a simulation course is primarily experiential in nature, classroom teaching remains an important element. It is extremely unlikely that this will cause much of a problem for legal research professors, but it could ensure that a legal research simulation course doesn’t swing too far to the experiential side. Classroom instruction can involve a variety of different activities and methods—including lecture, in-class research activities, and discussion. Students need the fundamental knowledge of process, tools, and sources to successfully perform skills in practice. A “classroom instructional component” of the simulation course actually allows for instructors to devote in-class time to imparting vital knowledge about sources, research process, and the ethics of legal research.

When deciding which courses to use as simulations, legal research professors should note that Interpretation 303-1 does not allow double counting of courses required under Standard 303. This is important because in addition to experiential courses, Standard 303 requires a first-year and

an upper-level writing experience.

This means that a first-year legal research and writing course may not be eligible to satisfy the simulation course requirement because it will likely be satisfying the first-year writing requirement. Because of the competing writing requirements, and the fact that second- and third-year students are likely in a better position to benefit from a simulation course, advanced or specialized legal research courses are the most likely candidates for a simulation course under the Standards.

Golden Opportunity

The new simulation standards offer librarians a golden opportunity to make sure they are included in the practice-ready discussion. While most ALR courses will have to make certain changes to meet the standard, the changes are doable and will ultimately benefit students. Simulation ALR courses are still works in progress at UNC and BYU, but by being thoughtful about the new ABA standards, they have taken the first steps to creating an experiential, simulation ALR curriculum to give upper-level students practical experience in legal research. ■



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