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A recent article in the *Journal of Legal Education* by Joan Howland and Nancy Lewis[1] reports on a survey of law firm librarians assessing the legal research skills of summer clerks and first-year associates. The article concludes that law students are poorly trained to do legal research. The authors describe this situation as a problem, one that law school administrators ought to examine and solve. I have no reason to disagree with the survey results, but I think a few comments about the nature of the problem are in order. I write as a tenure-track faculty member who once taught legal research and who retains a keen interest in the subject.

I will make three observations. First, law school administrators may not have improved the legal research curriculum over the years because it is adequate already. In a sense, surveys such as Howland and Lewis's tend to confirm that conclusion. Second, the reward structure for law school faculty favors publishing, not teaching; those interested in greater emphasis on instruction in research cannot easily overcome this fact of academic life. Third, law school administrators will not improve the legal research curriculum until they feel some pressure to do so. The pressure of librarians' complaining has obviously not been enough. The demand for better research instruction must come from law firms and from the addition of a legal research component to state bar examinations.

Why the Research Curriculum May Be Adequate Already

To borrow a phrase from Holmes, a problem is not a "brooding omnipresence in the sky."[2] It is something experienced by an identifiable person or group. If people do not experience a problem, then they do not have a problem—no matter how many times somebody tells them they do. I conclude that administrators and faculty not involved with teaching research in law schools (the "decision makers"[3]) do not have a problem; if

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1. Joan S. Howland & Nancy J. Lewis, The Effectiveness of Law School Research Training Programs, 40 J. Legal Educ. 381 (1990).
2. Holmes, J., dissenting in Southern Pacific Co. v. Jenson, 244 U.S. 205, 222 (1916).
3. I recognize that many librarians are faculty members and therefore participate in decisions about curricula. They are usually in a small minority, however, so when I say "decision makers" I am referring to those who have the power—majority votes,

they did, they would be hard at work trying to solve it. Instead, the people who have a problem are the people who teach legal research in law schools and law firms, often librarians and adjunct or non–tenure-track faculty ("research teachers"). Those who teach research are engaged in the fruitless task of trying to persuade decision makers that the decision makers have a problem they do not experience.

How can it be that those who teach research perceive a problem, when those empowered to commit resources to teaching do not? One surprising answer is that legal research may not be all that important. In a back-handed way, the survey by Howland and Lewis implies that that is so. The survey sampled law firms that are "large enough to employ professional librarians"—firms located in large metropolitan areas that employ, on average, 154 lawyers. For the needs of their practices, the firm librarians reported a dismal level of research competence among summer clerks and first-year associates.

Most lawyers do not, however, work in big-city firms that employ over 150 lawyers. In fact, over ninety percent of all American law firms consist of one or two lawyers. Firms of more than fifty lawyers account for only eleven percent of all practicing lawyers. Roughly forty-five percent of all lawyers are in general practice, not the specialty practices that are a feature of most large firms.[4] Although general practice lawyers handle a wide array of cases, from corporate work to personal injury to divorce, one might guess that they do not need to do anything approaching the amount of research done in large firms.

If this guess is true, then law schools may already be doing a cost-effective job for most of their graduates, in the sense that most of those graduates do not need any better instruction than they are getting. To be sure, this in itself may be a sad commentary on the overall competence of the bar. Perhaps even small-firm lawyers could do a better job if they had better research skills. But if that were true, why would lawyers with better research skills not drive lawyers with only minimal skills out of business? That this has not happened among smaller firms suggests strongly that these firms are already doing a cost-effective job of research and that lawyers who go to work in these firms do not need additional legal research instruction in law school.

It may well be that the most cost-effective system of legal research instruction overall is one in which law schools teach an absolute minimum of research skills, with individual firms then investing whatever resources they think are necessary to raise their new associates' skills to the appropriate level. Formalized law firm instruction in research skills would, in this view, be an appropriate and economically efficient way to train lawyers—not at all the desperate response to a chronic law school failure that many librarians believe it to be.

authority, or whatever—actually to effect a change in how research is taught. I take it as a given that librarians and other teachers of research do not have that power; otherwise things would have changed long ago.

4. All figures come from Robert MacCrate, The Hidden Majority, A.B.A. J., April 1, 1988, at 8.

Why the Faculty Reward Structure Works Against the Research Curriculum

A second reason that research may not be emphasized more in law school curricula is that the incentive structure facing faculty members discourages attention to teaching research. Law school faculty not now involved with the research curriculum are rewarded for what they already do; they will not be rewarded for doing a better job of teaching legal research. Let me break this observation down into three points.

First, faculty members at the kind of schools sending graduates to the kind of firm that Howland and Lewis surveyed receive external rewards such as prestige, salary, tenure, and promotions primarily for their scholarship and publications. They receive external rewards secondarily if at all from teaching.[5] They may receive the internal rewards of satisfaction—the sense of a "job well done"—from both activities. However, because the sense of satisfaction is much the same whether one teaches research or a substantive course, differences in the energy and attention faculty pay to scholarship versus teaching will be governed largely by the external rewards, and those rewards overwhelmingly favor scholarship.

Second, legal research is a skill, and like the other skills components of law school curricula, including trial advocacy, negotiations, and brief writing, it requires considerable resources to be taught well. Skills training requires on-going development of detailed problems, a high faculty-student ratio, and substantial clerical and administrative support, as well as funding for new staff or the time and attention of existing faculty—all of which translates into a very resource-intensive curriculum. Increased resources are not on the horizon for most law schools, however, and will not appear simply in response to the urging of those who want to improve the research curriculum.

Third, the existing reward structure guarantees that most faculty already spend as little time on teaching as they can justify, consistent with their personal desires and professional obligations. Asking these faculty to improve the research curriculum is therefore asking them to take money, time, and energy away from the activity that brings them their greatest external reward—scholarship—and to apply those resources to teaching research skills—an activity that brings them essentially no external reward whatever. It is not going to happen.

I point out these factors not because I oppose improvements in the legal research programs at law schools, but rather because I think it important

5. Students continually express dismay over the faculty reward structure, as if it were established by conscious human control and could be changed by some sort of faculty vote or administrative action. It is not and cannot be, of course. Scholarship gets rewarded largely because everyone who matters (faculty at other schools) can and will learn what particular faculty members think by reading their publications—which go to most academic law libraries and are easily available. Almost no one knows what or how other faculty members teach. The reward structure will therefore shift to teaching only when classroom sessions are filmed and readily available in libraries everywhere. I hope I am not unduly negative in thinking that this has less than a snowball's chance in hell of happening.

for those involved with research to have a realistic understanding of some of the reasons that research programs are not better than they are.

How to Improve the Research Curriculum

So much for the bad news—now let me make some suggestions. If research teachers believe that a greater academic emphasis should be placed on research, then some way has to be found to make that need a problem of the law school's decision makers, not just the research teachers. The decision makers must feel the pain of inadequate research programs. Until they feel it directly, they will not have a problem and accordingly will have no motivation to come up with a solution. Although dissatisfied firms occasionally call law school librarians and placement directors about the inadequate research skills of recently hired clerks and associates,[6] they should instead call the law school dean or chair of the curriculum committee. Librarians receiving such calls should suggest that the caller speak directly to those responsible for decisions about the research curriculum and offer to transfer the call. A lawyer's complaining directly to the dean or curriculum committee chair will have far more impact than the librarian's relaying the message.

Law firm librarians who know first-hand how poorly trained their new associates are should keep a record of how much of the firm's resources go to correcting research deficiencies. How many hours are spent answering questions that should have been unnecessary? How many training sessions must the firm conduct each year? How much time goes into preparing for these sessions? How many Lexis or Westlaw hours are unnecessarily consumed by ignorant searches that inflate the firm's fees, which then encourages corporate clients to do more work in-house? If these figures add up to significant costs, then firms will begin to press the law schools for better research teaching.

A longer-range plan that librarians and firms and faculty ought to support would be to add a legal research component to state bar examinations. One may wonder why it is not already there. Nearly everyone gives lip service to the need for research skills, so there cannot be any objection in principle to testing research as a condition for admission to the bar. The objections will all be practical: research cannot effectively be tested; it varies too much from state to state and among different areas of practice; because questions would require references to private publishers, the test would unfairly boost or disparage certain publishers; testing research skills would add to the complexity and cost of an already burdensome exam; research is a nuts-and-bolts matter and the exams are designed to test thinking; and so forth.

Some of these objections are patently groundless. Research can be tested as well as anything can be, and it is tested in many law schools. Research

6. See Alan Holoch, Legal Research: "From the Blackboard to the Jungle," Legal Publishing Preview [R. R. Bowker], Nov.–Dec. 1989, at 117. I am told by some librarians that such calls are rare; if that is true, it constitutes further evidence that the research problem is a problem of those who teach research, not a problem of law firms.

does not vary across state lines as much as law does. Research teachers refer to, discuss, and teach about private publishers in law schools and law firms every day of the week. Other objections prove to be groundless as well. The complexity and cost of bar exams are secondary to the issue of exam relevance and validity. If research skills are necessary to the proper practice of law but cannot be added to existing bar exams, then something is wrong with existing bar exams, and it is time to overhaul them. Anyone who thinks that bar exams only test high-level thinking skills must not know what "thinking" is. Every bar requires an immense amount of memorization, often about such procedural nuts-and-bolts issues as when and where to file lawsuits. To the extent that research involves matters of detail, it differs not one whit from existing detailed bar questions. More to the point, research is a skill that often requires highly abstract thinking about how to solve problems; in this respect, research differs not one whit from the "best" questions on bar exams. After all, if research were so trivial a matter that it needed no testing, why are so many lawyers so poor at it?

Objections to a research component on bar exams will ultimately spring from bar examiners' unwillingness to change the system. Few of us, after all, seek to make more work for ourselves if we do not gain from the effort. How can research teachers overcome this unwillingness? One way is to ease the burden of preparing questions. A task force of law school and law firm librarians should formulate a set of bar exam questions, which can then be tested and improved. Under the auspices of the AALL and the AALS, a continuing committee should review and update the questions each year for the bar examiners. Research teachers can grade the questions. If adding a research component to bar exams is relatively painless for examiners and has the advantage of putting renewed emphasis on a neglected but significant area of law school curricula, it stands a chance of happening.

Conclusion

"Research researchers" such as Howland and Lewis might consider a new question on their next survey: Would law firm librarians support the inclusion of a legal research component on state bar examinations? If the response is strongly positive, the chances of success are immeasurably better.

The teaching of legal research can be improved, but only if those in a position to do something about it are given an incentive. That means that law school deans and committee chairs, as well as bar examiners, have to feel some direct discomfort from inadequate research instruction. If they do not, research teachers can complain all they like, but nothing will happen; if they do, change and improvement in the research curriculum will follow naturally.