

OUR QUESTION — YOUR ANSWERS

This is a regular column of reader-prepared answers offered in response to a specific question posed by Perspectives. Readers are invited to submit not only "answers" but also "questions" that they would like to see addressed in future issues.

*Appearing as a special guest editor of the column for this issue is **Penny A. Hazelton**, Professor of Law and Law Librarian at the University of Washington in Seattle, and a member of the Perspectives Editorial Board.*

OUR QUESTION

Suppose a state decided to include a legal research question on its bar exam. What should the question look like?

YOUR ANSWERS

"If you were stranded on a desert island with the following research problem and you found a magic lamp, rubbed it, and a genie appeared and offered three of the seven secondary sources or finding tools we learned about in class in exchange for his freedom, which ones would you choose, in which order, and why? Assume you already have access to primary law.

"The problem was on Tennessee law, and the seven sources were treatises, encyclopedias, legal periodical indexes, ALR®, digests, Shepard's, and annotated codes."

—**Kelly Browne**, University of Tennessee College of Law

"Assume you have never worked with the legal topic(s) involved [insert fact pattern here]. Please outline the steps you would take to research this fact situation. List the types of legal publications you would use IN THE ORDER YOU WOULD USE THEM, explain what type(s) of information you would expect to find in each publication, and how that information would be used either to advance to additional resources or to prepare your final documents.

"Answers will depend slightly on fact pattern provided (so question could possibly be altered and reused) and will allow for some personal choices (e.g., ALR v. digest). Since most of the standard types of publications are available via CALR, choice of databases could be worded into the question if so desired."

—**Kathy Carlson**, Wyoming State Law Library

"What steps should be taken to update federal and state [where bar exam administered] statutes, administrative rules and regulations, and case law? Be as specific as possible, including mention of particular research tools used."

—**Angus Nesbit**, University of Oregon School of Law

"You work for a very large law firm. You have been given a research problem by the senior partner who remembers the name of a case she thinks is relevant to the main issue involved. You find the case (using either online services or the Table of Cases of the appropriate West digest) and determine that it is indeed relevant. Using only this one known case (its citation and the opinion itself) to further your research, you want to generate more information related to the topic of your problem and of this case.

"In the firm's library, you have access in print and CD-ROM format to ALR (all series), Am Jur 2d, and Shepard's Citations. The firm subscribes to the print format of West's digests, West's® National Reporter System®, and a multivolume treatise on the research topic. The firm library also includes LegalTrac and WILSONDISC. You may use LEXIS or WESTLAW, but only if you will be able to justify the expense to your client.

"Using some or all of the sources in your firm's library, explain how you would locate additional secondary and primary authority as a result of using this one relevant case to try to access these sources. Include in your answer the format used, if there is a choice indicated above (print, CD-ROM, or, with a statement of justification, LEXIS or WESTLAW); a description of your search methodology; and what type of secondary or primary authority you might get from this source."

—**Richard Ducey**, University of Tulsa College of Law

"Imagine you are stranded on a desert island with two sets of law books. You have no phone, fax, laptop or communication with the outside world. Legal research is your obsession, what you live for, and you can't imagine a day going by without being able to research some fascinating legal topic. Which two sets of law books would you choose and why? Describe the content, organization, and use of these two sets of books. By the way, the pocket parts or other supplements will magically arrive in corked bottles on the beach, so be sure to describe the updating process as well."

—**Diana Botluk**, Catholic University of America School of Law

“ [E]xplain how you would locate additional secondary and primary authority as a result of using this one relevant case. ”

“If you want to see if the applicant can do legal research, you need a library.”

“The answer to what the exam should look like depends upon what you desire to test and your resources. If you want to test applicants’ common knowledge of legal sources, you could do that with multiple-choice-type or short-answer questions. I have done both, and I favor the multiple-choice form as the short answers were too widely varied in the students’ responses.

“If you want to see if the applicant can do legal research, you need a library. You could put together one electronically through a network or a CD-ROM [and] give an assignment to see if the applicant can locate relevant authority. You will, again, have to understand that you will have a wide variety of answers, many of which can be right depending upon how the authority is used. Costs of creating the library and the resource requirements (computers, CD-ROM or networks and output) may preclude this type of exam. This also assumes everyone knows how to perform legal research electronically. I would think this would be preferable to having the applicants wander about in a library, but the cost may be a problem. In a state with a relatively small number of takers you could do this.

“An alternative could be to take applicants who have been determined to have passed the bar exam and give them some ‘take home’ research problem with the warning to do their own work [and] remember the honor system. With this system at least you have fewer exams to administer and more control over behavior.”

—**J. Denny Haythorn**, Whittier College of Law

“I think the question should be written from the perspective of the bar exam taker being the research attorney for a client’s specific problem (fact pattern). The research attorney (bar exam taker) should then be asked three questions: (1) how should the client’s problem be structured from a legal research standpoint (research strategy); (2) what specific resources, both primary and secondary, should be used to implement the research strategy decided upon; and (3) what format (paper, microfiche, online, CD-ROM) of material should be used and why.

“A question framed in this way would require a more holistic answer from the bar exam student (as opposed to rote memorization of discrete units of information). Legal analysis, critical thinking, and organizational acumen would all be tested by such a question type.”

—**Mitch Counts**, Baylor University School of Law

“Your new client wants to manufacture widgets. What steps should you take to research current federal and state laws and regulations concerning widgets? What continuing research steps will you take to keep abreast of new and proposed legislation and regulation concerning widgets in the future?”

—**John M. Perkins**, Oklahoma City University School of Law

“I whipped out these suggestions in a few minutes by asking myself, ‘What are some of the goofiest questions I’ve gotten from attorneys, particularly new associates?’ Basically, I would like to see the bar exam test applicants’ ability to operate in the real world of legal practice.

1. (Texas-specific) Locate the writ history of a recent Texas case.

2. Using books, not an online service like WESTLAW or LEXIS, find the most current version of a U.S. statute that may have been amended in the last year. Determine the effective date of the statute.

3. What kind of legislative history can be found for state statutes?

4. Name five types of information not available on the Internet.”

[Ed. Note: Dina provided the answers, but they were deleted due to space considerations.]

—**Dina Dreifuert**, Clements, O’Neill, Pierce & Nickens

“Based on my experiences as an academic law librarian and California bar exam grader, I see a bar exam question on legal research as looking like a component of the ‘Performance Tests.’ These are two three-hour segments of the California bar exam designed to test ‘lawyering skills.’ The tests set up a fact situation and ask the applicant to write a document that would ordinarily be required during the practice of law, such as a memo to a law firm partner or a closing argument. The applicant is given everything needed to complete the assignment, including a file containing client information, and a library containing relevant and irrelevant statutes and cases.

“The inclusion of irrelevant materials is meant to test the applicant’s ability to distinguish the relevant items. The problem that a test of legal research skills would face is that the ‘library’ is small enough that all of the items in it can be read before the applicant begins to diagnose the problem. Graders have no way to ascertain which applicants could enter a real library (or go online) and precisely retrieve the relevant documents needed to solve the problem.

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“Providing a library too large to be read within the time allotment would pose problems. What should be feasible is to ask the applicants to write a separate research memo. In this memo the applicants would explain the research process they used, and what further steps they would take to research the question.

“This approach would make research methodology an integral part of the exam, rather than having it be separated out as a discrete unit with no relationship to ‘real’ lawyering skills. The disadvantage is that the weight allocated to this portion of the exam may be small, given the time restrictions on the exam and the difficulties inherent in establishing consistently calibrated grading standards.”

—Marie Blosh, Hayward Public Library

Next Issue's Question

What is your number one method for keeping abreast of changes in technology that pertain to either the way you work or the subject(s) you teach?

Please send your answers (and suggested questions for future issues) to

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